SPECIAL IMPROVEMENT DISTRICT FINANCING: RESOLVING A CRISIS?

AND

OTHER ISSUES BEFORE THE REVENUE OVERSIGHT COMMITTEE

A Report to the Governor and the 54th Legislature

November 1994

Published by

Montana Legislative Council

Montana Legislative Council
State Capitol, Room 138
Helena, Montana 59620-1706
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A Report to the Governor and the 54th Legislature

From the
REVENUE OVERSIGHT COMMITTEE

As Required by
Senate Joint Resolution No. 33
53rd Legislature

Prepared by
Jeff Martin, Staff Researcher

November 1994

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PREFACE

This document is the second of two reports from the Revenue Oversight Committee to the Governor and the 54th Legislature.* It is divided into two unrelated parts. Part One (Chapter One and Chapter Two) is the final report from the study mandated by Senate Joint Resolution No. 33. This resolution, passed by the 1993 Legislature, directed the Revenue Oversight Committee to conduct a study on special improvement district financing. During the 1993 Legislative Session, a District Court decision held that Carbon County was not required to make loans from its revolving fund to two insolvent rural special improvement districts. The decision raised questions about the enforceability of revolving fund covenants. Senate Bill No. 426 was introduced to resolve the issues raised by the court decision. However, certain provisions of the bill were so contentious that the bill was not passed. Senate Joint Resolution No. 33 was adopted to address the issues raised by the court decision and by Senate Bill No. 426. Chapter One provides a historical review of the legislative development of special improvement district financing, summarizes the District Court decision, and discusses the issues raised during the consideration of Senate Bill No. 426. Chapter Two describes the activities of the Revenue Oversight Committee with respect to the study.

Part Two (Chapter Three), discusses a limited number of issues that came before the Revenue Oversight Committee during the 1993-94 interim that were unrelated to the conduct of formally structured studies. These issues include the initiative petition to suspend House Bill No. 671 (the bill that generally revised the state individual income tax and the corporation license tax); the refund of state income taxes illegally collected from federal retirees; property tax issues related to the completion of the Department of Revenue's reappraisal cycle and to the taxation of agricultural land; tax incentives for certain oil producers; the funding shortfall experienced by the ground water assessment program; and the monitoring of state revenue collections as part of the Committee's revenue estimating responsibilities.

* The other report is Tax Expenditures in Montana: Concept, Reporting, and Review by Jeff Martin, Montana Legislative Council, Helena, October 1994.

SENATE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE REVENUE OVERSIGHT COMMITTEE CONDUCT AN INTERIM STUDY OF SPECIAL IMPROVEMENT DISTRICT FINANCING AND RURAL SPECIAL IMPROVEMENT DISTRICT FINANCING; AND DIRECTING THE COMMITTEE TO REPORT ITS FINDINGS TO THE 54TH LEGISLATURE.

WHEREAS, counties and cities and towns typically establish revolving funds for the purpose of securing bonds issued for special improvement districts and rural special improvement districts; and

WHEREAS, a recent District Court opinion determined that a county is not liable for the payment of bond and warrant principal and interest when a special improvement district or a rural special improvement district is insolvent and when loans made from the revolving fund have no chance of being repaid; and

WHEREAS, other states use different methods to protect bondholders and taxpayers if an improvement district is unable to meet its bond obligations, and these methods should be examined by the Legislature; and

WHEREAS, the Legislature last substantively addressed the financing of special improvement districts and rural special improvement districts 12 years ago; and

WHEREAS, major changes have occurred in the use of bonds and warrants for the financing of improvement districts during the last 12 years; and

WHEREAS, the Revenue Oversight Committee is an appropriate committee to conduct an interim study of improvement district financing.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee be assigned to conduct an interim study of special improvement district and rural special improvement district financing in Montana.

BE IT FURTHER RESOLVED, that the Committee in its study:

(1) review Montana's special improvement district and rural special improvement district financing laws, including legislative histories and judicial interpretations; and

(2) consider other methods used by other states, including methods used by Utah, Wyoming, and Colorado, for securing bonds issued by improvement districts.

BE IT FURTHER RESOLVED, that the Committee, in its deliberations, solicit the knowledge and advice of bond experts and local government officials.

BE IT FURTHER RESOLVED, that the Committee report the findings of the study to the 54th Legislature and present options for legislative consideration if the Committee determines that options are necessary.

RECOMMENDATIONS

The Revenue Oversight Committee recommends that the 54th Legislature enact the following legislation:

LC 22

An Act generally revising the laws concerning the financing of special improvement districts and rural special improvement districts; revising the information that must be included in the notice of intention to create an improvement district; allowing a board of county commissioners or a municipal governing body to impose an additional interest rate on unpaid assessments; requiring that 5 percent of the principal amount of bonds or warrants be deposited in the revolving fund for bonds and warrants secured by the revolving fund; limiting the duration of the revolving fund obligation; and establishing factors to be considered before pledging the revolving fund.

LC 81

An Act providing that certain county (rural special) improvement districts may declare bankruptcy under federal municipal bankruptcy law; and providing that counties may not declare bankruptcy.

PART ONE

SPECIAL IMPROVEMENT DISTRICT FINANCING: RESOLVING A CRISIS?

CHAPTER ONE
SPECIAL IMPROVEMENT DISTRICTS, CARBON COUNTY, AND SENATE BILL NO. 426

INTRODUCTION

Montana laws allow counties and municipalities to create special improvement districts* and to issue bonds for the purpose of financing public improvements within the districts. The bonds are repaid by special assessments on the real property within the districts. To ensure the prompt payment of the principal and interest on the bonds, counties and municipalities may establish revolving funds to make loans to the improvement districts. Generally, financing for the revolving fund is accomplished by a transfer of money from the general fund of the county or municipality or by levying a property tax on all taxable property within the county's or municipality's jurisdiction. The revolving fund must be maintained until all bonds and interest on the bonds have been repaid.

In 1984, Carbon County established two rural special improvement districts for a subdivision and golf course near Red Lodge, Montana. Although the two districts subsequently became insolvent, the county levied a general property tax for the period 1988 through 1990 to make loans for the payment of bond principal and interest.

On December 31, 1990, Carbon County asked the Montana First Judicial District Court, Lewis and Clark County, to determine whether the county was obligated to continue levying taxes for and providing loans from the revolving fund for the payment of bonds. On February 3, 1993, Judge Thomas Honzel issued a Memorandum and Order stating that Carbon County was not required to make loans from the revolving fund to the insolvent districts.[1]

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* As used in this report, unless otherwise required by context, the term "special improvement district" refers to a special improvement district created by a municipality end to a rural special improvement district created by a county.

The decision raised questions about the enforceability of revolving fund covenants. There was concern that special improvement district bonds would not be marketable or would be marketable only at much higher interest rates. As a result, the Senate Committee on Local Government requested a committee bill to address the issue. Senator John "Ed" Kennedy, chairman of the Senate Committee on Local Government, introduced Senate Bill No. 426 (1993), an act generally revising the laws concerning special and rural special improvement district revolving funds.

Proponents of Senate Bill No. 426 argued that the measure was needed in order to maintain the viability of revolving funds to provide adequate security for special improvement district bonds and to ensure the marketability of future bonds.

Opponents argued that the Honzel decision did not create a crisis in special improvement district financing and that the issues raised by Senate Bill No. 426 were too complex to be addressed in the short time remaining in the session.

The bill passed the Senate but subsequently died on second reading in the House of Representatives. Because the issues raised by both the Honzel decision and by Senate Bill No. 426 were left unanswered, Senator Sue Bartlett introduced Senate Joint Resolution No. 33, a study resolution requesting the Revenue Oversight Committee to study special improvement district financing.

The purpose of this chapter is to briefly summarize the statutory development of special improvement districts in Montana and to review some of the legal interpretations relating to the use of special improvement districts. The chapter also summarizes the Honzel decision and discusses the issues raised during the consideration of Senate Bill No. 426.

THE HISTORY OF SPECIAL IMPROVEMENT DISTRICTS FROM 1887 THROUGH 1979

In 1979, the Revenue Oversight Committee undertook an investigation of

special improvement districts.* The report prepared for the Committee examined the history of special improvement districts from 1887 through 1979 and is attached as Appendix A.

HISTORY OF SPECIAL IMPROVEMENT DISTRICTS SINCE 1979

In 1981, the Montana Legislature provided another source of revenue that may be deposited in the revolving fund to provided security for bonds and warrants. In addition to a loan from the general fund or a general tax levy, a city may deposit up to 5% of the principal amount of the bonds or warrants in the revolving fund (Ch. 435, L. 1981). This legislation also allowed the governing body of the city to transfer any excess remaining in the revolving fund after the final payment of the district's bonds or warrants to the general fund. Similar provisions were already in place for rural special improvement districts.

The 1979 report to the Revenue Oversight Committee noted that some cities and counties, contrary to the interpretation of the Department of Community Affairs, believed that the local government was allowed to annually levy a tax for the revolving fund regardless of the balance in the fund.[2] The Legislature in 1981 clarified that a general tax levy for the revolving fund may not be for an amount that would increase the balance in the revolving fund above 5% of the outstanding bonds and warrants (Ch. 308, L. 1981). The legislation also clarified that the governing body of a city or county is authorized to transfer an amount in excess of the amount necessary for the payment of maturing bonds from the revolving fund to the general fund.

House Bill No. 872 (Ch. 422, L. 1983), introduced by Representative Walter Sales, authorized local governments to issue special and rural special improvement district bonds for newly created districts without the bonds being secured by the revolving fund. This measure was somewhat at odds with the policy in effect since 1929, which required the backing of the revolving fund for bond issues. The purpose of the 1929 law was to improve the marketability of special improvement district bonds. Obviously, interest rates

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* The Revenue Oversight Committee was created by the 46th Legislature in 1979.

on bonds issued without the backing of the revolving fund could be much higher.

Based on the limited testimony in favor of House Bill No. 872, it may be inferred that at least some local governments were reluctant to use the revolving fund for certain types of development because of the risk of default. There was no evidence presented detailing the magnitude of delinquencies associated with special improvement districts. Representative Sales did tell the Senate Committee on Local Government that the city of Bozeman would not create special improvement districts for developers because "they had been burned so badly in the past".[3]

Representative Sales also told the Senate Committee on Local Government that Montana was the only state that provided 100% backing for special improvement districts.[4] The local government* authorizing the issuance of bonds or warrants for a special improvement district may determine whether the revolving fund secures the bonds and warrants. Although the risk associated with bonds and warrants unsecured by the revolving fund would be much greater, developers would have a source of funding through the sale of bonds. The change in law did not apply to special improvement districts already secured by the revolving fund. The Legislature specifically provided that existing revolving funds must remain intact until the principal and interest on bonds and warrants have been fully paid and discharged.

THE CARBON COUNTY CASE

In 1984, Carbon County created two rural special improvement districts for a subdivision and a golf course near Red Lodge. The subdivision was proposed by Red Lodge Country Club Estates Joint Venture (Joint Venture). The county was initially unable to sell rural special improvement district bonds for the districts. The county then negotiated with several bond underwriters** to

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* As used in this report, the term "local government" refers to the governing body of a municipality or a county.

** The underwriters were Dain Bosworth, D.A. Davidson, and Piper, Jaffrey & Hopwood.

purchase the bonds. The county established a revolving fund to ensure timely bond payments. The Joint Venture also provided letters of credit as security. However, the letters of credit and the assessments collected on property within the districts were sufficient to pay bondholders for only 1986 and 1987.* As a result, Carbon County levied a general tax so that loans could be made from the revolving fund to the district funds. Although the two districts subsequently became insolvent, the county levied a general property tax for the period 1988 through 1990 to make loans for the payment of bond principal and interest. The county stopped making loans from the revolving fund after 1990 but continued to levy the tax for deposit into the revolving fund.

On December 31, 1990, Carbon County asked the Montana First Judicial District Court, Lewis and Clark County, to determine whether the county was obligated to continue levying taxes for and providing loans from the revolving fund for the payment of bonds. The county also sought a declaratory judgment to foreclose its lien against the property in the districts in order either to convey the property to the bondholders or to use the proceeds from the sale of the property first to pay back the revolving fund and then to pay the bonds.

The underwriters requested that the county be required to continue to make loans from the revolving fund to the district funds.

On February 3, 1993, Judge Thomas Honzel concluded that:

> where it is established that an RSID has defaulted on its bonds, that the district is insolvent, and that there are insufficient funds in the revolving fund to make up the deficiency, a county should not be required to make any further loans from the revolving fund.[5]

In his decision, Judge Honzel noted that 7-12-2181, MCA, provides that "[n]othing herein shall authorize or permit the elimination of a revolving fund until all bonds and warrants secured thereby and the interest thereon have been

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* The Joint Venture subsequently filed a reorganization plan under Chapter 11 of the federal Bankruptcy Code. See Chapter 2 for a summary of the federal Bankruptcy Court order.

fully paid and discharged." He concluded, however, that the county would have to continue to levy a tax and would have to provide loans from the revolving fund, perhaps indefinitely, "because the interest and principal on the bonds might never fully be repaid".[6]

Judge Honzel also considered two other questions. The first was whether the obligation of paying the bonds is the obligation of the district or of the local government that established the revolving fund. The second was whether the county could incur indebtedness for a single purpose in an amount that exceeded the debt limit established in 7-7-2101(2), MCA, without the approval of the majority of electors of the county.

With respect to the first question, Judge Honzel, relying on previous Montana Supreme Court decisions[7], reiterated that the obligation to pay bonds is on the district.

Judge Honzel pointed out that the Montana Supreme Court "has not addressed the applicability of a debt limitation statute . . . where the special improvement district is insolvent".[8] He noted that requiring the county to continue to make bond payments for insolvent districts "would, in effect, transfer an obligation from the districts to the County . . .".[9] Taxpayers living outside a proposed special improvement district may be unaware of its creation. A notice of the proposed creation of a special improvement district is mailed only to property owners within the district, and only those within the district have the opportunity to protest its creation. Judge Honzel considered this as additional support for his conclusion that Carbon County should not be required to provide additional loans from the revolving fund to the district funds.[10]

SENATE BILL NO. 426

Shortly after the District Court entered its order granting Carbon County's motion for summary judgment, the Senate Committee on Local Government requested a committee bill to address the issues raised by the court decision.

Senator Kennedy, as chairman of the Committee, sponsored Senate Bill No. 426. Because the bill was requested shortly before transmittal of nonrevenue bills, the bill was referred to the Senate Taxation Committee. During testimony on Senate Bill No. 426, Senator Kennedy told the Committee that the bill clarified three points:

- The obligation of a local government to make loans to the SID is not dependent on there being adequate, unpaid assessments to repay the loan;
- The obligation to make the loan is not subject to restrictions of limitations of other laws [referring to debt limitations and voter approval of debt]; and
- The obligation to make the loan is not unlimited and the bill defines when the obligation would end.[11]

Mae Nan Ellingson, attorney, Dorsey & Whitney, told the Taxation Committee that Senate Bill No. 426 would, based on previous court interpretations, clarify that bonds secured by the revolving fund are legal obligations of the local government (thus the bill entails a contingent liability for the general taxpayer). The local government must provide a loan to the district fund whenever there are delinquent assessments. She reiterated that the obligation ends on the later of the final maturity date of the bonds or when the city or county has issued a tax deed for all the property that is subject to the special improvement district assessment.[12] Several state and local government officials urged the passage of Senate Bill No. 426 to ensure the marketability of special improvement district bonds.

Opponents of Senate Bill No. 426 painted a different picture of the purpose of the revolving fund. Mona Nutting, County Commissioner of Carbon County, said that the purpose of the revolving fund was not to guarantee partial payments to bondholders but rather was to provide cash flow between the time that special improvement district assessments are due and the time that the assessments are actually received. She went on to say that:

> [t]hese same bondholders make voluntary investments after receiving a prospectus which should have disclosed the risk

> associated with the investment. [It is] the underwriter's responsibility, or the legal counsel's responsibility, to make investors aware of the risk involved.[13]

Ward Swanser, attorney, Moulton, Bellingham, Longo & Mather, representing Carbon County, said that Senate Bill No. 426 would change the fundamental nature of the revolving fund from a limited obligation, short-term loan to a limited general obligation of the local government. Mr. Swanser said that the court's ruling would not affect the ability to make loans to districts in which the loan is secure. It would affect, however, loans to districts that are insolvent. Mr. Swanser suggested that other methods may be used to secure loans from the revolving fund. These methods would include:

- the capitalization of an amount in the revolving fund from the proceeds of a bond sale;
- the creation of a deficiency fund that may be used after a certain portion of outstanding bonds and interest has been paid;
- the creation of a guaranty fund that would establish a local government's obligation to retire bonds; or
- the creation of a special fund that would utilize revenue to secure loans, with limits, from sources other than the property tax.[14]

The Senate Taxation Committee amended Senate Bill No. 426 to require cities (7-12-4225, MCA) and counties (7-12-2185, MCA) to undertake an extensive review of proposed special improvement districts before entering into undertakings and agreements regarding the revolving fund. These amendments were designed to reduce the potential of default within the district. The amendments would have applied to districts created after the effective date of the bill. Other provisions of the bill would have applied retroactively to revolving funds (except for the case of Carbon County) created before the effective date of the bill.

Senate Bill No. 426 passed the Senate and was referred to the House Taxation Committee.* The House Taxation Committee recommended that the bill not be concurred in. The bill was taken from adverse committee report status and referred to the House Committee on Local Government. This Committee recommended that the bill be concurred in as amended, but the bill subsequently failed on second reading in the House.

OBSERVATIONS AND CONCLUSIONS

This chapter and Appendix A have summarized the legislative history of special improvement districts in Montana and have reviewed some of the legal interpretations relating to the use of the revolving fund to provide loans to special improvement districts. This chapter also summarized the Honzel decision and presented some of the issues raised during the consideration of Senate Bill No. 426.

The issues raised by Senate Bill No. 426 were very controversial, and the discussions were, at times, contentious. Opposing views as to the purpose of the revolving fund were articulated. The Legislature was unable to reconcile these views in legislation, and the policy issues raised during consideration of the bill remained unresolved.

* Testimony before the House Taxation Committee on Senate Bill No. 426 was transcribed verbatim.

CHAPTER TWO
STUDY ACTIVITY

INTRODUCTION

At its January 28, 1994, meeting, the Revenue Oversight Committee (Committee) began the study of financing special improvement districts. The study had been delayed by the November 1993 Special Session. The Committee staff presented the report contained in Chapter One.

The staff also informed the Committee that the Honzel decision had been appealed to the Montana Supreme Court. Oral arguments were made in early January 1994. The staff said that the court could uphold or reverse the Honzel decision or remand the case for further consideration. Regardless of the Supreme Court decision, the staff recommended that the Committee proceed with the Senate Joint Resolution No. 33 study. The Committee would have the opportunity to resolve the policy disputes regarding the purpose of the revolving fund and to determine who should bear the ultimate risk for bonds and warrants issued for special improvement districts.

PUBLIC TESTIMONY

Following the presentation of the report, several individuals, including representatives of local and state government, bond counsel, and an attorney representing Carbon County, discussed the impact of the Carbon County case and other issues related to the financing of special improvement districts.

Alec Hanson, Executive Director, Montana League of Cities and Towns (League), reported the results of a survey conducted by the League to determine the impact of the Honzel decision on the ability of municipalities to issue special improvement district bonds. According to Mr. Hanson, most of the 75 respondents indicated that they were unable to issue special improvement district bonds because of the Honzel decision. Municipalities that had issued bonds believed that the interest rates on the bonds were higher than they otherwise would have been.[15]

Representatives from the cities of Helena, Billings, and Bozeman described the difficulties that each city has had in issuing special improvement district bonds. Bill Verwolf, City Manager, Helena, told the Committee that the city of Helena has been trying, unsuccessfully, to sell two special improvement district bond issues since the summer of 1993. Nathan Tubergen, Director of Finance and Administrative Services, Billings, said that the city of Billings has sold four special improvement district bond issues since the Honzel decision. However, the city received only one bid from a private party for each issue. Mr. Tubergen said that bond underwriters will not bid on special improvement district bonds until the Honzel decision is clarified. Miral Gamradt, Finance Director, Bozeman, said that the city of Bozeman had sold only two special improvement district bond issues, each to a private party. One of the bond issues was for a water project. In addition to the pledge of the revolving fund, the city had to provide additional security from the water fund as a condition of sale for this bond issue.

Mae Nan Ellingson said that special improvement districts provide a mechanism for the development of cities and counties. She emphasized that the pledge of the revolving fund is one way to achieve the lowest possible cost for a special improvement district. The backing of the revolving fund ensures that one delinquent taxpayer does not cause the bond issue to go into default. She pointed out that because the community at large also benefits from the improvements, it is not unreasonable to impose a contingent liability on the general taxpayer of the local government that issues the bonds. She noted that more of the risk could be shifted to the bondholder but that would necessarily entail a higher interest cost.

John Shontz, attorney, Doney, Crowley & Shontz, representing Carbon County, told the Committee that there are several policy issues that should be addressed regarding the purpose of the revolving fund. One issue is whether the revolving fund is simply a cash flow mechanism to ensure that bonds are paid in a timely manner or whether the revolving fund is a guaranty for the financial obligations of the district. Another issue relates to the allocation of

risk. That is, who should ultimately bear the risk for special improvement district bonds. Mr. Shontz argued that it is the bondholders that should bear the entire financial risk. However, if general taxpayers are required to bear some of the risk, either by a loan from the general fund of the local government or by a limited general tax levy, then the Committee should consider formal procedures by which general taxpayers can evaluate the potential risk and make an informed decision on whether to assume that risk. He also said that there should be specific remedies available for whomever ultimately bears the risk.

The Committee also discussed other issues relating to special improvement districts. These issues included incidental costs associated with the creation of a special improvement district and whether there should be different standards for evaluating the risks associated with special improvement districts proposed for developed areas as opposed to undeveloped areas. Barbara Neuwerth, Department of Health and Environmental Sciences, and Anna Miller, Department of Natural Resources and Conservation, described the role of the state revolving fund in providing loans for water development projects and wastewater treatment projects for certain special improvement districts. Although Ms. Neuwerth and Ms. Miller were concerned about the impact of the Honzel decision on the state revolving fund, they believed that those concerns would be resolved indirectly by the study recommendations.

SUBCOMMITTEE APPOINTED

Following public testimony, the Committee decided that the study of special improvement district financing could be conducted more efficiently by a Subcommittee. Chairman Dan Harrington appointed a Subcommittee consisting of Senator Bruce Crippen as Chairman, Senator Tom Towe, Senator Tom Beck, and Representative Bob Ream.

Because there was limited time to conduct the study, Senator Crippen directed the Committee staff to prepare a list of issues that the Subcommittee should consider. He also requested that interested persons respond in writing to those

issues. Some of the issues that interested persons were asked to address included but were not limited to:

- What is the effect of the Honzel decision on the marketability of special improvement district bonds?
- What is the purpose of special improvement district revolving funds--should the fund be used to ensure cash flow for the payment of bonds and warrants (loans) to the district fund or to provide a (limited) guaranty for the district fund?
- How should the risk of special improvement district bonds be allocated to the district, the general taxpayer, and the bondholder?
- In what circumstances, if any, should the cost of special improvements be paid by taxpayers living outside the district?
- Should the revolving fund be subject to statutory debt limitations of a city or county?
- Should formal review criteria for creating a special improvement district be enacted into law?
- Should the review criteria, if established, for creating a special improvement district in undeveloped areas be different than in developed areas?
- What other financing mechanisms are available, especially for undeveloped areas, to secure the payment of special improvement district bonds?
- Should the use of special improvement districts be enhanced or curtailed?
- What role does state or federal revenue play in the creation of special improvement districts?
- How should the cost of improvements be allocated in the case of additional requirements (e.g., requiring the oversizing of a water main) imposed on the special improvement district in anticipation of future growth?[16]

A discussion of these issues served as the starting point for the Subcommittee's first meeting.

FIRST MEETING OF THE SUBCOMMITTEE

The Subcommittee held its first meeting on March 24, 1994. Lee Heiman, staff legal advisor, presented an oral summary of a federal Bankruptcy Court order confirming Chapter 11 bankruptcy reorganization of Red Lodge Country Club Estates Joint Venture (Joint Venture).[17] In addition to resolving claims against the Joint Venture, the Bankruptcy Court essentially affirmed the Honzel decision that Carbon County is not obligated to make loans from the revolving fund to the rural special improvement districts created on behalf of the Joint Venture.

Mr. Heiman told the Subcommittee that the Montana Supreme Court directed the parties involved in the appeal of the Carbon County case to submit briefs explaining the effects of the Bankruptcy Court order on the appeal.

Following Mr. Heiman's discussion of the bankruptcy decision, the Subcommittee and interested persons (a list of the study participants is found in Appendix B) that included bond counsel, bond underwriters, local and state government officials, legislators, and representatives of both sides of the Carbon County case engaged in a round-table discussion of the Honzel decision and the relevant issues regarding the financing of special improvement districts.* The format of the discussion was generally based on the written responses to the issue questions framed by the Subcommittee staff.[18]

There was general agreement that special improvement districts and the use of the revolving fund are appropriate mechanisms for financing infrastructure in special improvement districts. However, most participants said that the Honzel decision has adversely affected the bond market for special improvement districts. According to a memorandum prepared by several member municipalities of the League, bond issuers (in this case, municipalities) reported the following problems related to marketing bonds:

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* The Subcommittee followed the loosely structured round-table discussion throughout the study.

- the inability, in many instances, to sell bonds;
- sales to single bidders at higher interest rates;
- negotiated sales, because of a lack of bidders, also at higher interest rates; and
- supplemental security requirements (e.g., a pledge of water and sewer system revenue*).[19]

Most of the participants were concerned that because of the Honzel decision, a local government could abrogate the pledge of the revolving fund if it could somehow "prove" that a district is insolvent and that the loans made from the revolving fund could not be repaid. Under these circumstances, investors would be extremely reluctant to participate in such an uncertain market.

In the course of the round-table discussion, the Subcommittee staff presented a memorandum on financing of special improvement districts in Colorado, Wyoming, and Utah.[20] Ms. Ellingson also discussed the methods used in Iowa, Wisconsin, Minnesota, and South Dakota to finance special improvement districts. In general, the Subcommittee members and most participants agreed that the better approach would be to improve existing Montana laws "incrementally" rather than trying to rewrite special improvement district laws based on the "model" of some other state.[21]

In that vein, Chairman Crippen suggested that the Subcommittee should look at limiting the revolving fund obligation within the objectives of providing a level of security for bondholders and limiting the financial obligation of the general taxpayer. Following a free-flowing discussion related to additional "up-front" security for special improvement district bond issues, to the foreclosure on delinquent property, to bankruptcy, and to limiting the liability of the general taxpayer, Senator Towe offered the following proposals for consideration:

- shorten the foreclosure period on delinquent property tax assessments;

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* This kind of pledge would not work for other improvements, such as street paving.

- allow local governments to create a special improvement district reserve fund;
- limit the revolving fund obligation to a percentage of the bond issue (i.e., the revolving fund obligation would terminate when the established percentage of the bond issue has been paid);
- require voter approval if the issuer wants to exceed the percentage limitation;
- limit the revolving fund obligation to the maturity date of the bond issue; and
- stay the revolving fund obligation if the special improvement district declares bankruptcy.

Kreg Jones, D.A. Davidson, said that the bankruptcy provision would have to apply to the entire district and not to individual properties. John Shontz had earlier made the point that legislation would be necessary to allow a county to take a rural special improvement district into bankruptcy. A municipality can do it now because it is incorporated.

With respect to Senator Towe's second suggestion, Ms. Ellingson said that municipalities have recommended that a mandatory contribution of 5% of the bond proceeds should be deposited in the revolving fund and that an additional 5% of the bond proceeds should be deposited in a district reserve fund.[22] The district reserve fund would be utilized before recourse to the revolving fund. Several participants also suggested a mandatory interest charge of 0.5% a year on the assessments impose on property owners within the district.

Ms. Ellingson also suggested that the termination of the revolving fund obligation should be based on the earlier of the date that the bonds (or warrants) are fully paid or the later of the final maturity date of the bond issue or the date on which the lien on delinquent property has been extinguished.

The Subcommittee did not act on Senator Towe's proposals or on any of the suggestions offered by the participants. Chairman Crippen asked the

participants to be prepared to discuss these issues in more detail at the next meeting.

SECOND MEETING OF THE SUBCOMMITTEE

The Subcommittee held its second meeting on May 26, 1994. At the first meeting, the Subcommittee had discussed whether the laws related to the redemption period of a tax sale for delinquent property taxes and to delinquent special improvement district assessments should be changed.* Two issues had been raised. The first was whether the redemption period should be shortened, and the other was whether there should be a separate redemption period for delinquent property taxes and another for delinquent special improvement district assessments.

The Subcommittee invited comments from Stan Hughes, Gallatin County Treasurer, to find out what the Montana County Treasurers' Association's views are on these issues. Mr. Hughes said that although he may favor shortening the redemption period, most other County Treasurers do not. According to Mr. Hughes, the County Treasurers' main objection to shortening the redemption period is that it would (with respect to special assessments) favor bondholders and investment brokers over the taxpayers of the state.[23] He also said that it would be a mistake to establish separate redemption periods. A taxpayer whose property taxes are delinquent for 3 years may make a partial payment of delinquent taxes provided that the taxpayer pays the current year's property taxes. A partial payment includes the payment of all delinquent taxes and assessments for 1 or more full tax years (15-16-102(5), MCA). Mr. Hughes contended that separate redemption periods would confound an already complicated process. He suggested reviewing other states' laws for ways to improve the tax sale process. The Subcommittee agreed, but suggested that the review should not be part of any proposal addressing special improvement district financing.

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* Inspired by a participant's observation of a natural right: "Montanans' God-given right not to pay their [property] taxes for 3 years".

Lee Heiman informed the Subcommittee that the Montana Supreme Court had reversed and remanded the Carbon County case to the District Court for further proceedings.[24] The Supreme Court held that Carbon County has a contractual obligation under existing rural special improvement district laws to honor the covenants of the revolving fund pledge. The county must continue to make loans to the revolving fund and must continue to levy taxes or provide a loan from the general fund to replenish the revolving fund until the bond obligations not extinguished by the bankruptcy proceedings are paid. The effect of the decision is that a bond issuer is required to make loans from the revolving fund indefinitely, even though the revolving fund may be insufficient to retire the bonds and the issuer's loans may never be repaid.

Chairman Crippen said that the Supreme Court decision meant that the Subcommittee could abandon the study or proceed in an effort to improve special improvement district financing laws. The Subcommittee and participants believed that the special improvement district financing laws should be modified to avoid situations similar to the one experienced by Carbon County.

To that end, Ms. Ellingson presented a memorandum that outlined a proposal developed by local government finance officers, bond counsel, and bond underwriters.[25]* The proposal incorporated in large measure the provisions contained in Senate Bill No. 426 as well as some of the proposals discussed at the first Subcommittee meeting. One of the items in the new proposal would require a local government to consider a number of factors, including the financial condition of the improvement district and the diversity of ownership within the district, before issuing special improvement district bonds. The proposal also contained several elements that would provide for additional security for bond issues. These would include:

- a mandatory deposit in the revolving fund of 5% of the bond proceeds;

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* The proposal was developed without participation of the Subcommittee or the Subcommittee staff.

- the option of the bond issuer to establish a district reserve fund that is capitalized by up to 5% of the bond proceeds;

- a mandatory additional interest rate charge on special assessments at the rate of 0.5% over the rate of interest on the bonds; and

- an optional additional interest rate charge on special assessments at the rate of 0.5% over the rate of interest on the bonds. The mandatory and optional interest rate charge would go into the district interest account for payment of debt service.

The proposal also recommended limiting the time period in which the revolving fund is required to make loans to a district. The revolving fund obligation would terminate on the earlier of the date on which the principal and interest of bonds or warrants of the district have been paid or the later of the final maturity date of the bonds or warrants or the date on which all special assessments have been paid or discharged. For example, if the bonds were all paid on or before the final maturity date, then the obligation of the revolving fund would terminate on the date the bonds were paid. On the other hand, if bond payments were delayed because of delinquent assessments, the revolving fund obligation would terminate on the date that the bonds had been paid or when the lien on delinquent property had been discharged by tax deed or bankruptcy proceeding.

The Subcommittee was generally receptive to the proposal except on the issue of the termination of the revolving fund and on the issue of the obligation of the revolving fund to make loans to an insolvent rural special improvement district. Under Montana law, a municipality, because it is a corporation, may file for bankruptcy for itself or on behalf of an insolvent special improvement district under Chapter 9 of the federal Bankruptcy Code. The discharge of liens against the debtor special improvement district under a federal Bankruptcy Court order would relieve the municipality of its obligation to make loans from the revolving fund. Similar protection under Montana law is not available to rural special improvement districts because the counties that create them are subdivisions

of the state. Carbon County was relieved of its revolving fund obligation for the portion of the discharge of liens for the property owned by the Joint Venture.

The Subcommittee requested a bill draft incorporating the proposals contained in Ms. Ellingson's memorandum. Chairman Crippen said that the issues related to the termination of the revolving fund and to bankruptcy would be revisited at the next meeting.

THIRD MEETING OF THE SUBCOMMITTEE

The Subcommittee met on July 28, 1994, to consider a bill draft that would formally implement the proposals presented at the May 26 meeting. The bill draft was submitted by Mae Nan Ellingson and was revised by the Subcommittee staff to conform with Legislative Council bill drafting style.[26] The draft proposal would amend the laws relating to special improvement districts and to rural special improvement districts in a similar manner.

The bill draft contained the following recommendations that would apply to the creation of a special improvement district by a county or municipality:

- Require local government review of the following factors before a portion of the revolving fund is pledged for a special improvement district:
  - the market value of property compared to the estimated market value of the property after improvements;
  - the diversity of ownership within the district;
  - the amount of proposed special assessments within the district;
  - the amount of delinquent special assessments and delinquent property taxes within the district;
  - the benefit of the improvements to the general community; and

- for a district in a newly platted subdivision, any additional security provided by property owners within the district.

- Enhance the security of bond issues by:

  - requiring a mandatory contribution of 5% of bond proceeds to be deposited in the revolving fund for a district whose bonds are secured by the revolving fund;

  - allowing a local government to establish an optional district reserve fund financed by up to 5% of bond proceeds. (The district reserve fund may be established regardless of whether the revolving fund is pledged. However, if the revolving fund is pledged the district reserve fund must be exhausted before resort is made to the revolving fund.)

  - requiring a mandatory 0.5% interest rate assessment above the bond interest rate against property in the district; and

  - allowing a local government to impose an additional 0.5% interest rate assessment above the bond interest rate.

- Limit the duration of revolving fund obligation to the earlier of:

  - the date on which the principal and interest of bonds or warrants of the district have been paid; or

  - the later of the final maturity date of the bonds or warrants or the date on which all special assessments have been paid or discharged.

The essential purpose of these recommendations is to reduce the risk that the general taxpayer of the local government creating a special improvement district would be financially liable for the costs of the district.

The general taxpayer would be protected in three ways. First, the local government contemplating the creation of a district would be required to

conduct a comprehensive review of several factors related to the district before the revolving fund may be pledged for the payment of bonds or warrants. The local government would evaluate whether the proposed district would be capable of meeting its financial obligations. There was general agreement among participants and the Subcommittee that the review procedures would mitigate against a situation similar to the one that occurred in Carbon County.

Second, a local government would be required to obtain additional security for the payment of bonds or warrants. A local government that pledges the revolving fund would have to deposit 5% of the bond proceeds in the revolving fund. That amount would be used before a general fund loan to the revolving fund could be made or a tax levy could be imposed. A county or a municipality would also be required to impose an interest rate assessment of 0.5% above the interest rate on the bonds or warrants (regardless of whether the revolving fund is pledged).* A local government could also impose an additional 0.5% assessment. Finally, a county or municipality may establish a district reserve fund. The district reserve fund would be financed by up to 5% of the bond proceeds. If the local government had pledged the revolving fund, the district reserve fund would have to be depleted before resort is made to the revolving fund.

Third, a local government's obligation to make loans from the revolving fund would be limited in duration. The obligation would terminate upon the earlier of:

- the date on which the principal and interest of bonds or warrants of the district have been paid; or
- the later of the final maturity date of the bonds or warrants or the date on which all special assessments have been paid or discharged.

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* Under current law, counties are required to impose the additional interest rate assessment, while municipalities are not.

Under the proposal, a special assessment on a particular property would be discharged by the issuance of a tax deed by the county or by the payment of a secured claim for the special assessment in a bankruptcy order. The liability to the revolving fund would end even if the proceeds from a tax deed or from a bankruptcy order were insufficient to fully pay the principal and interest of the bonds or warrants. The full amount of the bonds would not be paid when the value of special assessments exceeded the value of the property. Under this scenario, some of the risk would be shifted from the general taxpayer to the bondholder because the local government would no longer be required to levy for the revolving fund or provide loans from the general fund to the revolving fund.

In the sections of the bill regarding the factors that must be considered by the local government before pledging the revolving fund (7-12-2185, MCA, for counties, and 7-12-4225, MCA, for municipalities) is a provision that the findings made by the local government in the resolution authorizing the use of the revolving fund are conclusive evidence that the local government has taken into consideration the factors required by law.

John Shontz believed that the proposed language in 7-12-2185(4) and 7-12-4225(5), MCA, is an evidentiary standard that would leave a governing body of a county or a municipality without a defense in the event of a lawsuit related to the factors. Lee Heiman said that he interpreted those provisions differently. He believed that a local government could not be sued for not taking the review factors into consideration because the resolution would explicitly state that they had. The review of the factors does not guarantee the success of the special improvement district. Senator Towe said that the language is necessary to protect the general taxpayer from financial liability if the district is unable to meet its financial obligations. Mr. Shontz said that that interpretation should be clearly stated in the Subcommittee's final report.

The Subcommittee made several changes to the bill draft. Before a local government pledges the revolving fund for a special improvement district in a

newly created subdivision, it must consider, under the review factors, the developer's prior subdivision experience and credit rating or history. The evaluation of these factors would ensure that the developer has the expertise and financial resources to undertake an improvement project.

The Subcommittee clarified that the establishment of a special improvement district reserve fund would not preclude a local government from requiring additional security from property owners in the district. It is common practice for an issuer to require additional security from the developer or from property owners.[27] The Subcommittee also adopted a provision that would allow the local government to reduce or eliminate the optional 0.5% interest rate assessment if bonds were being paid off in a timely manner. However, the local government would not be allowed to subsequently increase or reimpose the assessment.

Finally, the Subcommittee adopted a provision, suggested by Mr. Shontz, that a local government must include in the notice of intention to create a special improvement district a statement that the general fund may be used to provide loans to the revolving fund or that a general tax levy may be imposed on all taxable property within the local government's jurisdiction to meet the financial requirements of the revolving fund. The notice informs the public that general taxpayers may be exposed to a financial risk if the revolving fund is pledged for bonds issued on behalf of the special improvement district.

The Subcommittee discussed the possibility of allowing an insolvent rural special improvement district to declare bankruptcy. The Subcommittee requested a bill draft that would allow a rural special improvement district to declare bankruptcy under federal municipal bankruptcy law (Chapter 9 of the federal Bankruptcy Code).

FOURTH MEETING OF THE SUBCOMMITTEE

The Subcommittee held its final meeting on September 7, 1994. Prior to final approval, the Subcommittee adopted several technical changes to the revised

bill draft. These changes, recommended by Mae Nan Ellingson, were incorporated to maintain consistency with language in special improvement district laws that are not amended in the bill.

The Subcommittee also considered a bill draft to allow a county to declare Chapter 9 bankruptcy on behalf of a rural special improvement district. The bill would amend 7-7-4111 through 7-7-4113, MCA, dealing with the procedures for declaring municipal bankruptcy. Under the proposed bill draft, a local entity may submit itself and a proposed plan of adjustment (an agreement between a debtor and creditors) to the Bankruptcy Court having jurisdiction. For the purposes of the bill, a "local entity" means a rural special improvement district, a special improvement district, or a city or town, but it does not mean a county. The governing body of a local entity must adopt a resolution declaring that the local entity is insolvent and that it desires to effect a plan for the adjustment of its debts under federal municipal bankruptcy laws. The governing body of a rural special improvement district is the Board of County Commissioners.

Under the proposed bill draft, the obligation of the revolving fund to make loans to a district would not be affected until final order of the Bankruptcy Court. However, a county could take the necessary steps to ensure that bankruptcy proceedings would begin in a timely manner.

As was the case with the bill draft on generally revising the special improvement district financing laws, Ms. Ellingson offered several clarifying amendments, most of which were adopted by the Subcommittee.

Chairman Crippen informed the participants that both legislative proposals would be presented to the full Revenue Oversight Committee for approval (or rejection) at the September 8, 1994 meeting. He warned everyone that the proposals are subject to change at any time during legislative consideration.

REVENUE OVERSIGHT COMMITTEE ADOPTS PROPOSALS

At the September 8, 1994, meeting of the Revenue Oversight Committee, Senator Crippen presented a summary of the Subcommittee's recommendations related to the general revision of special improvement district financing laws (LC 22) and to the bankruptcy provisions (LC 81). Senator Crippen then moved that the recommendations of the Subcommittee on SID and RSID financing be adopted and that both legislative proposals be sponsored by the Revenue Oversight Committee. The motion passed unanimously.

The bill drafts (LC 22 and LC 81) approved by the Committee are contained in Appendix C.

ENDNOTES

1. Carbon County v. Dain Bosworth, Inc., Cause No. CDV-90-1196, District Court (Feb. 3, 1993).

2. Teresa Olcott Cohea, "Special Improvement Districts and Rural Special Improvement Districts," in Miscellaneous Studies, A Report to the Forty-Seventh Legislature (Helena: Montana Legislative Council, November 1980), p. 7.

3. Senate Committee on Local Government, Minutes, March 15, 1983, p. 5.

4. Ibid.

5. Carbon County v. Dain Bosworth, Inc., p. 16.

6. Ibid., p. 10.

7. See Stanley v. Jeffries, 86 Mont. 114, 284 P. 134 (1929), Hansen v. City of Havre, 112 Mont. 207, 217, 114 P.2d 1053, 1059 (1941), and Griffin v. Opinion Publishing Co., 114 Mont. 502, 517, 138 P.2d 580, 588 (1943).

8. Carbon County v. Dain Bosworth, Inc., pp. 11 and 12.

9. Ibid., p. 15.

10. Ibid., p. 16.

11. Senate Taxation Committee, Minutes, March 17, 1993, p. 4.

12. Ibid., p. 7.

13. Ibid., p. 10.

14. Memorandum from Ward Swanser to the Senate Taxation Committee, March 16, 1993, Senate Taxation Committee, Minutes, March 17, 1993, EXHIBIT #10, p.4.

15. Revenue Oversight Committee, Minutes, January 28, 1994, p. 3.

16. Memorandum (Senate Joint Resolution No. 33 Study of Financing Special Improvement Districts and Rural Special Improvement Districts) from Jeff Martin, Staff Researcher, Revenue Oversight Committee, to interested persons, February 2, 1994.

17. In re Red Lodge Country Club Estates Joint Venture (D. Mont., Feb. 28, 1994) (No. 92-10185-11), in Minutes, Revenue Oversight Subcommittee on SID and RSID Financing, March 24, 1994, EXHIBIT #1.

18. See Minutes, Revenue Oversight Subcommittee on SID and RSID Financing, March 24, 1994, EXHIBITS #3 through #3E, for written responses.

19. Minutes, March 24, 1994, EXHIBIT #3A.

20. Memorandum (LIDs, PIDs, MIDs and Other SIDs) from Jeff Martin, Staff Researcher, to the Revenue Oversight Subcommittee on SID and RSID Financing, in Minutes, March 24, 1994, EXHIBIT #4.

21. Minutes, March 24, 1994, p. 14.

22. Mae Nan Ellingson, in Minutes, March 24, 1994, p. 16.

23. Stan Hughes, Gallatin County Treasurer, in Minutes, Revenue Oversight Subcommittee on SID and RSID Financing, May 26, 1994, p. 2.

24. Carbon County v. Dain Bosworth, Inc., 874 P.2d 718(1994), in Minutes, May 26, 1994, EXHIBIT #1.

25. Memorandum (followup from March 24 meeting on SJR 33) from Mae Nan Ellingson to members of the Revenue Oversight Subcommittee on SID and RSID Financing, May 23, 1994, in Minutes, May 26, 1994.

26. Revenue Oversight Subcommittee on SID and RSID Financing, Minutes, July 28, 1994, EXHIBIT #1.

27. Ibid., p. 16.

PART TWO

OTHER ISSUES BEFORE THE REVENUE OVERSIGHT COMMITTEE

CHAPTER THREE

MISCELLANEOUS ISSUES BEFORE THE REVENUE OVERSIGHT COMMITTEE

INTRODUCTION

During the 1993-94 interim, the Revenue Oversight Committee (Committee) considered several issues in addition to conducting formal studies. This chapter provides a brief summary of some of those issues and Committee action, if any.

On October 8, 1993, Governor Marc Racicot issued a call to the 53rd Legislature to meet in special session beginning November 29, 1993. The Governor's stated reason for the session was the referendum that resulted in the suspension of House Bill No. 671 (HB 671) and in its placement on the November 1994 ballot. In addition to legislation to rebalance the state's budget as the result of the suspension of HB 671, the Governor included several subjects that were of particular interest to the Committee. These subjects included:

- legislation to authorize refunds to federal retirees whose pensions were illegally taxed by the state;
- legislation to address the property tax system applicable to homeowners and landowners whose property values had suddenly increased in value because of reappraisal; and
- legislation to encourage horizontal drilling and secondary and tertiary recovery of oil in the state of Montana.

Several of the miscellaneous topics that follow are discussed in the context of the November 1993 Special Session.

INCOME TAX ISSUES

Initiative Petition to Suspend House Bill No. 671

House Bill No. 671 (Ch. 634, L. 1993), enacted during the 1993 Regular Session of the Legislature, significantly revised the individual income tax and

corporation license tax structures. The bill was designed to raise additional revenue ($72.7 million for the 1995 biennium) in the event that the voters rejected the Governor's tax reform package, which included a general sales tax coupled with significant income tax and property tax relief. The Governor's tax reform measure (Senate Bill No. 235) was referred to the voters as Referendum 111. The measure was overwhelmingly rejected by a 3-to-1 margin at a special election held June 8, 1993. Thus, HB 671 became effective.

House Bill No. 671 scrapped the graduated individual income tax rates (2% to 11% of taxable income) and imposed a flat tax at the rate of 6.7% of taxable income. The bill also eliminated itemized deductions but increased the standard deduction amounts (based on filing status) and the personal and dependent exemption amounts ($2,710 for each exemption). The standard deduction and the exemption amounts were indexed by an inflation factor equal to one-half of the annual change in the consumer price index. Married taxpayers, both of whom have earned income, who file a joint return would be entitled to an exclusion, not to exceed $3,000, equal to 10% of the earned income of the spouse earning the lesser amount. The standard deduction, the personal and dependent exemptions, and the additional exclusion for married taxpayers would be reduced by 6.75% for every $5,000 of federal adjusted gross income in excess of $100,000.

House Bill No. 671 increased the corporation license tax from 6 3/4% of all net corporation income (from 7% for corporations making a water's-edge election) to 7 1/4% (to 7.5% for water's-edge election) of all net income in excess of $500,000.

The passage of HB 671 prompted Rob Natelson, a University of Montana law professor and political activist, to initiate a petition to have HB 671 referred to the voters at the November 8, 1994, general election. If enough signatures were obtained, HB 671 would be suspended until the election. At its June 14, 1993, meeting, Greg Petesch, Director of Legal Services, Legislative Council,

informed the Committee of the possible consequences of the referendum. Mr. Petesch concluded that:

- If HB 671 is suspended, the provisions of law in effect prior to the effective date of HB 671 would return to effect.
- If HB 671 is suspended but approved by the voters, its provisions would be effective and apply to tax years 1993 and 1994. However, 1993 tax returns would have been filed at erroneous rates because the provisions of law that were in effect prior to the effective date of HB 671 were in effect during the term of suspension.
- If HB 671 is suspended and is rejected by the voters, a serious budget deficit will result because the 1995 biennium budget was based on anticipated revenue under HB 671.
- If HB 671 is referred but not suspended, it remains in effect until the election. If it is rejected, it will be as if HB 671 was never in effect. Tax returns for 1993 would have been filed at an erroneous rate.
- If HB 671 is referred but not suspended and is approved by the voters, the bill would remain in effect.[1]

Mr. Petesch noted that there would be significant administrative problems in dealing with tax returns filed at erroneous rates.

Teresa Olcott Cohea, Legislative Fiscal Analyst, described some of the fiscal implications of the referendum. She said that HB 671 is estimated to raise $72.7 million for the biennium. If HB 671 is rejected, the general fund ending fund balance at the end of the biennium would be a negative $48.1 million and the ending cash balance would be a negative $89.7 million. The suspension of HB 671 would limit the state's ability to sell tax and revenue anticipation notes.

Ms. Cohea also described the magnitude of the budget cuts required to generate $72.7 million in savings. She said that if education and human services were not part of the budget reductions, the general fund appropriations of 35 agencies and other general fund expenditures would have to be

eliminated effective January 1, 1994. If the governor exercised his authority to require state agencies to reduce spending, budget reductions of 8.4% of eligible general fund expenditures in fiscal years 1994 and 1995 would be needed. According to Ms. Cohea, review and comment procedures, entitlement provisions, and the lack of legislative involvement would severely limit this option. Using House Bill No. 2 (the 1993 Regular Session appropriation bill) as the base, budget reductions of 26% for the period January 1, 1994, through June 30, 1995, would be needed to achieve $72.7 million in savings. Other options would include large reductions in funding for the University System or the school equalization program during the same period.[2]

By early September 1993, enough petition signatures had been obtained that it appeared likely that HB 671 would be referred to the voters. At the Committee's September 17, 1993, meeting, Dave Bohyer, Director of Research and Reference Services, Legislative Council, presented a report to the Committee that analyzed some of the potential ramifications of the referendum.[3] Mr. Bohyer reiterated the point made at the June 14 meeting that if the referendum passes, Montana taxpayers would pay income taxes for tax years 1993 and 1994 at erroneous rates. As a result, every taxpayer in the state would have to file an amended return to receive a refund or to pay additional taxes. The administrative problems for the Department of Revenue (Department) could be enormous. The report also included some options for legislative consideration. One option would be to delay the effective date of the new law until January of 1994 or 1995. Mr. Bohyer said that that option appeared moot because enough petition signatures would probably be obtained to suspend the law.* Other options would be to repeal HB 671 and enact a similar measure at the same rate (thus breaking faith with the citizens' group whose efforts had placed the new law on the ballot) or at a lower rate (thus addressing the concern about increased taxes).

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* On September 28, 1993, the Secretary of State certified that enough petition signatures had been obtained to suspend HB 671. The bill has been referred to voters as Initiative Referendum No. 112 (IR-112).

Committee discussion of the report indicated uncertainty regarding the legal and administrative implications of the referendum and the effects of legislative action. In order to resolve that uncertainty, the Committee voted to request that the Speaker of the House or the President of the Senate, or both, request an Attorney General's opinion on the issues raised in Mr. Bohyer's report.

In response to the Committee's request, Senator Fred Van Valkenburg, Senate President, asked for an Attorney General's opinion regarding legislative options with respect to the suspension of HB 671. The request came after the Governor had called the Legislature into special session to address the revenue shortfall occasioned by the suspension. In response to Senator Van Valkenburg's request, the Attorney General held that:

- The Legislature retains the power to order a statewide special election on Initiative Referendum 112 at a time other than the 1994 biennial general election.[4]

In a separate opinion to the same request, the Attorney General held in part that:

- The Legislature lacks the power to modify the measure upon which the voters will vote in the election on IR 112.
- The Legislature retains the power to enact measures prior to the referendum election . . . . Such measures may be enacted contingent upon the approval of HB 671.
- The Legislature lacks the power to repeal legislation whose effectiveness has been suspended by referendum . . . until the legislation has become effective following a vote of the people.[5]*

According to the Attorney General, there was little that the Legislature could do to effect changes in the new tax law as a result of the suspension of HB 671 until the measure is approved or rejected by the voters. During the November 1993 Special Session, Senator Van Valkenburg introduced Senate

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* The Attorney General's opinions were issued during the November 1993 Special Session.

Bill No. 45 that would have ordered a special election on IR-112 in conjunction with the primary election in June 1994. The bill passed the Senate but died in the House of Representatives.

Federal Retirees Receive Refund for Taxes Illegally Collected

The state's tax treatment of federal retirement benefits has been an issue before the Legislature and the Committee since 1989.[6] On March 28, 1989, the U.S. Supreme Court held invalid, in Davis v. Michigan Department of the Treasury, 489 U.S. 803, 103 L. Ed. 2d 891, 109 S. Ct. 1500 (1989), a Michigan income tax law that provided a full exemption from state taxation of state and local government pensions but that provided only a partial exemption from state taxation of federal pensions. The Court ruling meant that retirement benefits received by federal retirees may not be taxed in a manner less favorable than for state and local retirees.

Twenty-three states, including Montana, were directly affected by the Davis decision. All the affected states ultimately responded legislatively to equalize the tax treatment of federal civil service and U.S. military pension income with the tax treatment of state and local pension income. In addition, 8 of the 23 states either settled with or provided refunds to federal retirees.[7] The other 15 states, including Montana, refused to pay refunds, claiming that Davis should be applied prospectively. In Edmund F. Sheehy, et al. v. State of Montana, 250 Mont. 437, 820 P.2d 1257 (1991), the Montana Supreme Court affirmed a District Court decision denying the request for refunds for taxes paid by federal and military retirees prior to Davis. That decision was appealed to the U.S. Supreme Court.

In Virginia, Henry Harper and 420 other federal retirees filed for a refund of Virginia state taxes on their pension incomes for 1985 through 1988 (Harper v. Virginia Department of Taxation, 509 U.S.___ (1993)). A state trial court denied the claim for a refund, and the Virginia Supreme Court affirmed the decision. The federal retirees appealed the decision to the U.S. Supreme Court. At about the same time, the U.S. Supreme Court decided James B. Beam

Distilling v. Georgia, 501 U.S. 529 (1991). The decision held that a 1984 case (Bacchus Imports, Ltd. v. Dias, 468 U.S. 263), prohibiting states from imposing higher excise taxes on imported alcoholic beverages, must be applied retroactively to claims arising from facts predating the original case.[8] The Court remanded Harper to the Virginia Supreme Court for further consideration in light of Beam.

The Virginia Supreme Court reaffirmed its decision that refunds were not required. It held that Beam did not foreclose the use of prospective analysis because Davis did not decide whether the U.S. Supreme Court's rule applied retroactively. The decision was again appealed to the U.S. Supreme Court.

In deciding Harper, the U.S. Supreme Court held that when the Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether those events predate or postdate announcement of the rule. The Supreme Court did not, however, provide a specific remedy. Instead, it held that Virginia is free to choose the form of relief that it will provide. Justice Thomas, writing for the majority, noted that the availability of a predeprivation hearing would constitute a "procedural safeguard sufficient to satisfy due process". On the other hand, if no such remedy exists, the state must "provide meaningful backward-looking relief" by awarding full refunds or by some other order that "creates in hindsight a nondiscriminatory scheme".

The Court remanded Harper as well as several other similar cases, including Sheehy, to the states for further consideration. At the September 17, 1993, meeting of the Committee, the Department informed the Committee that the Department believed that an adequate predeprivation hearing procedure was available in Montana and that no refunds were required except for tax year 1988.

Shortly after the decision in Davis, the Department advised federal civil service and military retirees to include pension income in excess of the $3,600 exemption on their 1988 tax returns. The Department also told taxpayers that any refund claims excluding federal pension income in excess of then-current law would be delayed pending court decisions on the issue. In light of Harper, the Department concluded that the advice was contrary to a predeprivation process and that refunds should be allowed for the 1988 tax year.

The Department also informed the Committee at the September 17 meeting that Governor Marc Racicot would request legislation in the special session that would authorize refunds for tax years 1983 through 1987.

At the Committee's November 17, 1993, meeting, Committee staff provided a summary of other states' actions in light of Harper.[9] Most states that had been involved in litigation concerning the retroactive application of Davis had resolved the refund of taxes in favor of federal retirees or were moving in that direction. At the time the staff report was prepared, Georgia, Montana, New York, North Carolina, and Virginia were still litigating the issue. Two bills that would have provided retroactive relief to federal retirees were considered during the November 1993 Special Session. One bill, as introduced, would have provided refunds (House Bill No. 57), and the other would have allowed a credit for taxes paid on federal retirement income (Senate Bill No. 22). The Legislature did not enact either measure.

On March 25, 1994, Mick Robinson, Director, Department of Revenue, informed the Committee that the Department had reached an agreement on refunds with the federal retirees. Federal retirees who had filed timely claims for refunds for tax years 1983 through 1987 would receive a full refund of taxes paid plus interest of about 3% a year. The settlement amount was approximately $10.5 million (about $6 million less than would be required if the retirees prevailed in litigation), including attorney fees of $300,000. The settlement was approved by the First Judicial District Court, Lewis and Clark County, in May 1994. Refund checks were issued starting in August 1994.

The Department had already issued refunds to federal retirees for the 1988 tax year.

The Committee's staff legal advisor informed the Committee that the Department had the authority to enter into the agreement and to make refunds. He also said that a legislative appropriation was not required because the agreement did not involve damages against the state.

PROPERTY TAX ISSUES

Impact of Property Reappraisal Reported

The value of residential and commercial real property increased by an average of 7.3% statewide as a result of the reappraisal cycle completed by the Department in 1992. The new values went into effect on January 1, 1993. Increases in taxable value in some counties, especially in the western part of the state, were much greater than the statewide average, while in some counties taxable value actually declined from the previous year.

At the Committee's June 14, 1993, meeting, Mick Robinson presented information, by county, on the estimated change in taxable value as a result of the reappraisal of residential and commercial real property. The largest increases in taxable value occurred in Lake County (18%), Flathead County (11.3%), Silver Bow County (7.1%), and Gallatin County (6.9%). The largest decreases in taxable value occurred in Dawson County (-4.6%), Musselshell County (-4.5%), Liberty County (-4.3%), and Daniels County (-4.1%).[10] These figures do not necessarily reflect the magnitude of the increase or decrease that may have occurred with respect to the taxable value of individual pieces of residential or commercial property.

Characterizing the relatively large increases in taxable value and mill levies experienced by many Montana residents "as a crisis in fairness", Governor Racicot instructed Mr. Robinson to establish an advisory council for the purpose of developing proposals for legislation to address the crisis. The Department acted as facilitator for the council's deliberations.

Because the Governor included the consideration of property tax relief in his call for the special session, Committee staff presented a report at the November 17 meeting that discussed some of the issues related to property taxation.[11]

The first part of the report summarized the results of the annual survey conducted by the U.S. Advisory Commission on Intergovernmental Relations on the public's attitude on taxation. The survey showed that, since 1972, the property tax competes with the federal income tax as the worst tax, that is, the least fair. Although the poll does not necessarily reflect Montana's attitude on taxation, there has been a long-standing dissatisfaction with the state's property tax structure.

The 1972 Montana Constitution requires that the state appraise, assess and equalize the value of all property that is to be taxed (Article VIII, section 3). The staff report provided a brief history of the reappraisal of residential and commercial property since the adoption of the new Constitution. The report also discussed some of the implications of I-105 and the sales assessment ratio studies that were used to value residential and commercial property during the last reappraisal cycle (1986-1992). The report also warned that the Legislature faced potential gridlock in attempting to address the complexities of property tax reform in the short time available in a special session.

Also at the November 17 meeting, Mr. Robinson presented the findings and recommendations of the Governor's Advisory Council for Property Ownership (Council).[12] The Council recommended an expansion of low-income property tax relief, the phasein and capping of increases of taxable value, and a "makeup" tax when a property is sold. The Committee did not take a position with respect to the Council's recommendations. Although the Legislature passed a constitutional referendum (Constitutional Referendum No. 28) that would allow for the statewide equalization of residential and commercial property values to be based on acquisition value (purchase price), the issue of property tax relief became so divisive during the special session that no other property tax measure was adopted.

Taxation of Agricultural Land

At the Committee's March 25, 1994, meeting, Senator Tom Beck asked the Department about some very large increases in the assessed valuation of irrigated farm land (according to Senator Beck, up to 250% in some cases). The 1993 Legislature significantly revised the way in which agricultural land is valued (Ch. 267, L. 1993 [SB 168]). The Legislature anticipated that irrigated land values would increase substantially, but not by the amounts cited by Senator Beck. The Department said that it would look into the matter and report back to the Committee at its next meeting.

The 1993 Legislature also revised the eligibility requirements to qualify land as agricultural land (Ch. 627, L. 1993 [HB 643]). Previously, land in excess of 20 acres automatically qualified as agricultural land so long as it was not devoted to a residential, commercial, or industrial use. Under the new law, land must be in excess of 160 acres to automatically qualify. The owner of land that is between 20 and 160 acres must demonstrate that the land is used for agricultural purposes.* A parcel of land is presumed to be agricultural land if the owner of the land (or the owner's agent) markets not less than $1,500 in annual gross income from agricultural products produced by the land. Otherwise the owner of the land must verify to the Department that the land is used for agricultural purposes. If the land is not used for an agricultural purpose, it is taxed at seven times the tax rate applied to grazing land (3.86% times the productive value of the land).

The Committee discussed some of the anomalies of the new law. For example, a landowner may have a lower tax bill under the higher rate for nonqualifying land than would be the case if the land was taxed as a bona fide agricultural operation. Committee members commented that this issue may have to be revisited in the 1995 legislative session.

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* The new law did not affect the eligibility requirements to qualify land under 20 acres as agricultural land.

At the Committee's next meeting (May 27, 1994), Representative Chase Hibbard reported on the activities of the Agricultural Advisory Committee (Advisory Committee). The Advisory Committee was appointed by the Governor, as required in SB 168, to review water costs, crop share arrangements, and other issues related to the valuation of agricultural land. Representative Hibbard said that the Advisory Committee had focused primarily on water costs and crop share arrangements. The Advisory Committee was considering recommendations that would change the determination of water costs and that would revise the capitalization rate. These changes would lessen the relatively large increases for irrigated farm land. Although the Advisory Committee had not yet reached consensus, it was required to make recommendations to the Department by July 1994.

Regardless of the final recommendations of the Advisory Committee, Representative Hibbard told the Committee that he thought that a new method should be developed to determine the productive value of agricultural land. A much better method of assessing productivity would be based on soil types and other natural factors, such as rainfall and temperature.[13] Judy Paynter, Principal Tax Administrator, Department of Revenue, said that under the method advanced by Representative Hibbard, the soils data would be developed by the U.S. Soil Conservation Service. That information would provide much more accurate analysis of yield (productivity) regardless of management factors. Agricultural land could be taxed on potential productivity without regard to current production.[14]

Also at the May 27 meeting, Randy Wilke, Appraisal and Assessment Bureau Chief, Property Assessment Division, Department of Revenue, presented a report summarizing the implementation of HB 643.[15] The report included the statutory provisions of HB 643, the Department's administrative rules, and the valuation and assessment procedures for classifying land as agricultural or nonagricultural. Committee members suggested that the valuation and assessment procedures section of the report could be improved by including more examples. Mr. Robinson responded that it would be difficult to provide

an example for every situation that may arise. He said that the Department should be allowed to exercise its professional judgment in applying the criteria under HB 643.

Judy Paynter informed the Committee, at its July 29, 1994, meeting, that the Advisory Committee would recommend to the 54th Legislature that a base water cost of $5.50 an acre be used in the formula to calculate the productive value of irrigated land. According to Ms. Paynter, if the valuation provisions that were contained in SB 168 are not revised, the taxable value of all agricultural land would increase by 2.7% by 1997, but the taxable value of irrigated agricultural land would by increase 53%.* If the recommended base water cost is adopted by the Legislature, the taxable value of all agricultural land would increase by 0.4% and irrigated land by 32% by 1997. The recommended change would be consistent with the Legislature's desire to keep the total taxable value of agricultural land constant despite reappraisal.

TAX INCENTIVES FOR CERTAIN OIL PRODUCERS

At the November 17, 1993, meeting, the Committee heard a proposal from representatives of Shell and Meridian oil companies for tax incentives for enhanced recovery projects completed between January 1, 1994, and December 31, 2001. The companies proposed an 18-month exemption from net proceeds taxes on production from horizontal wells and reduced net proceeds tax rates and reduced severance tax rates (state severance taxes and local government severance taxes) on incremental production from enhanced recovery projects. According to the representatives, these incentives could result in $141 million dollars of new capital investment and 138 new wells over 8 years. In addition, the oil companies projected new tax revenue of $122.8 million over the economic life of the new wells.[16] The proposal was adopted by the Legislature (Ch. 9, Sp. L. November 1993 [SB 18]) during the special session.

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* Under SB 168, increases and decreases to the assessed value of agricultural land are phased in over a 3-year period.

The Board of Oil and Gas Conservation (Board) is required to report at least once a year to the Committee concerning the implementation of the new oil production tax incentives. At the Committee's September 8, 1993, meeting, Tom Richmond, Administrator, Oil and Gas Conservation Division, Department of Natural Resources and Conservation, presented the first annual report on the implementation of the new law.[17] Mr. Richmond said that SB 18 requires the Board to certify new horizontal wells, to approve new and expanded enhanced recovery projects, and to certify oil production decline rates. He said that the Board has approved two enhanced recovery projects and would consider eight more applications at its September 19, 1994, hearing. The Board has also certified to the Department of Revenue that eight horizontal wells have been completed.[18]

Representatives from Shell and Meridian oil companies said that they have expanded their oil drilling budgets in Montana as a result of the tax incentives.[19] Although Shell and Meridian have engaged in most of the drilling activity inspired by the new law, at least four independent oil producing companies have initiated drilling projects to take advantage of the tax incentives.[20]

COMMITTEE SUPPORTS FINANCIALLY TROUBLED PROGRAM

In 1991, the Legislature created the ground water assessment program for the protection and management of ground water quality in Montana. The program is administered by the Montana Bureau of Mines and Geology under the direction of the Montana Ground Water Assessment Steering Committee. The program is funded by the resource indemnity trust tax (14.1% of the proceeds from the tax). During the 1993 Regular Session, the Legislature authorized the Bureau of Mines and Geology to spend up to $666,000. However, the program has received significantly less than that amount because revenue from the resource indemnity trust tax has been less than projected. In addition, the proceeds from the metal mines tax allocated to the resource indemnity trust fund were not diverted to the ground water assessment account because of a technical oversight in the original legislation. As a result, the Bureau of Mines

and Geology has substantially cut back the program, including a reduction in staff from 12.75 FTE to 5.25 FTE.

Following a discussion of the magnitude of the problem with representatives of the Ground Water Assessment Steering Committee and the Bureau of Mines and Geology, the Committee encouraged the Bureau of Mines and Geology to request an interentity loan under the provisions of 17-2-107, MCA. The Committee also asked the Governor and the Legislative Finance Committee to support the interentity loan or a supplemental appropriation, if necessary. Finally, the Committee agreed to support corrective legislation to ensure that a portion of the proceeds from the metal mines tax is allocated to the ground water assessment program. *

The Committee met jointly with the Legislative Finance Committee on September 8, 1994, to consider the "Big Picture" financial analysis for the 1997 biennium by the Legislative Fiscal Analyst (LFA). One of the agenda items included a discussion of the ground water assessment program. Following a presentation by LFA staff on the status of the ground water assessment program, the Legislative Finance Committee approved a resolution in support of the recommendations of the Committee.

The Governor has since authorized a transfer in the amount of $120,000 from the environmental contingency account (75-1-1101, MCA) to the Commissioner of Higher Education and subsequent allocation to the Bureau of Mines and Geology.[21] That action eliminates the need for an interentity loan or a supplemental appropriation. However, the Legislature will still have to consider corrective legislation for future funding of the program.

MONITORING REVENUE COLLECTIONS

Prior to the commencement of a regular legislative session, the Committee is required to estimate the amount of revenue available for legislative

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* Senator Chuck Swysgood has requested a bill draft (LC 25) to address the defect in the allocation of the metal mines tax to the ground water assessment program.

appropriation (5-18-107(5), MCA). One of the most important review functions undertaken by the Committee during the interim is the monitoring of revenue collections.

At the Committee's September 17, 1993, meeting, Terry Johnson, Principal Analyst, LFA, presented a report on the preliminary fiscal year 1993 ending fund balances of the state general fund and the school equalization account.[22] The ending fund balance for the two accounts was $57.1 million, or $18.8 million above the amount anticipated by the 53rd Legislature. Based on House Joint Resolution No. 3 (HJR 3) estimates (the revenue estimating resolution adopted by the 53rd Legislature), revenue collections were $11.1 million (1.2%) above the estimated amount. The most significant differences from the estimates occurred in the corporation license tax, the railroad car tax, the inheritance tax, the property tax, and lottery revenue.

In anticipation of the November 1993 Special Session, the Committee met on November 10, 1993, to revise the revenue estimates contained in HJR 3. Terry Johnson presented revised assumptions used to determine revenue estimates by revenue source. Because of the suspension of HB 671, the estimates for individual income taxes and corporation license taxes were reduced by $72 million. In addition, the Department had issued approximately $6 million of refunds for tax year 1988 to federal retirees. The suspension of HB 671 and the tax refunds resulted in a $78 million revenue impact to the state. Reductions in anticipated revenue from the oil severance tax (not related to the passage of SB 18) and from interest earnings, combined with anticipated increases from other sources of revenue, resulted in a net increase of $25 million from these other revenue sources. Altogether, the LFA estimated a net reduction of $53 million in revenue to the state general fund and the school equalization account.

Steve Bender, Assistant Budget Director, Office of Budget and Program Planning, presented the revised revenue estimates of the budget office. He said that the budget office estimates differed from the LFA estimates by less than

$1 million in the general fund and by about $3.9 million in the school equalization account, for a combined difference of about $2.9 million. The difference in the two estimates was much higher than these figures indicate because the budget office anticipated that $6.4 million dollars would be collected in the current biennium from the railroad car tax. This tax had been challenged by railroad car companies operating in Montana. The ultimate collection of the tax may hinge on a U.S. Supreme Court decision in a similar situation in Oregon.* The Committee decided to adopt the LFA assumptions and the resulting biennium estimates of $1.77 billion in the state general fund and school equalization account.

On July 29, 1994, Terry Johnson presented a report to the Committee on fiscal year 1994 revenue collections for the general fund and the school equalization account.[23] According to Mr. Johnson's report, revenue, including prior year adjustments and equity transfers, was $21 million higher than anticipated by the Legislature during the November 1993 Special Session. As a result, the combined general fund and school equalization account ending fund balance was a little over $22 million more than expected. Well over half ($15.7 million) of the increase in revenue was attributable to the individual income tax.

The LFA estimates that the combined ending fund balance will be $38.9 million at the end of the 1995 biennium, while the Governor's budget office anticipates an ending fund balance of $54.1 million.** As a result, the Governor has proposed returning $25 million to Montana taxpayers.

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* On January 24, 1994, the U.S. Supreme Court overturned a lower federal court ruling that held that the Oregon law discriminated against railroad property (Department of Revenue of Oregon v. ACF Industries (73 AFTR 2nd 94-460 (No. 92-74)).

** The budget office estimate includes $15 million from the railroad car tax. See previous footnote.

ENDNOTES

1. Greg Petesch, letter to Speaker of the House John Mercer, May 27, 1993, in Minutes, Revenue Oversight Committee, June 14, 1993, EXHIBIT #1.

2. Memorandum (Potential Suspension of House Bill 671) from Teresa Olcott Cohea, Legislative Fiscal Analyst, to the Legislative Finance Committee and the Revenue Oversight Committee, June 10, 1993, in Minutes, Revenue Oversight Committee, June 14, 1993, EXHIBIT #2.

3. Dave Bohyer, House Bill No. 671 and the Possibility of Referendum: Issues and Options (Helena: Montana Legislative Council, September 15, 1993) pp. 1-8, in Minutes, Revenue Oversight Committee, September 17, 1993, EXHIBIT #4.

4. 45 A.G. Op. 18 (1993), p. 1.

5. 45 A.G. Op. 20 (1993), p. 1.

6. See Jeff Martin, Senate Bill No. 226: The Taxation of Retirement Income in the Wake of Davis v. Michigan, A Report to the 53rd Legislature (Helena: Montana Legislative Council, November 1992), pp. 1-54.

7. Juliann Avakian-Martin, "Harper Decision Leaves Many Questions Unanswered", in State Tax Notes, Vol. 4, No. 26 (Alexandria, VA: Tax Analysts, June 28, 1993), p. 1536.

8. Douglas W. Briggs Jr., "High Court Again Remands Harper to Virginia", in State Tax Notes, Vol. 4., No. 26, p. 1536.

9. Jeff Martin, Review of State Action in the Wake of Harper (Helena: Montana Legislative Council, November 1993) pp. 1-9.

10. Minutes, Revenue Oversight Committee, June 14, 1993, EXHIBIT #9.

11. Jeff Martin, "Some Issues Related to Property Taxation" (draft), November 1993, in Minutes, Revenue Oversight Committee, November 17, 1993, EXHIBIT #5.

12. Memorandum (Committee Report and Recommendations) from Mick Robinson, Council Facilitator (Montana Department of Revenue), Tax Advisory Council for Property Ownership, to Governor Marc Racicot, November 3, 1993, in Minutes, Revenue Oversight Committee, November 17, 1993, Exhibit #6.

13. Minutes, Revenue Oversight Committee, May 27, 1994, Montana Legislative Council, pp. 3 and 4.

14. Ibid., p. 4.

15. Montana Department of Revenue, Implementation of House Bill 647: Taxation of Land Between 20 and 160 Acres, in Minutes, Revenue Oversight Committee, May 27, 1994, EXHIBIT #2.

16. Minutes, Revenue Oversight Committee, November 17, 1993, EXHIBIT #1.

17. Thomas Richmond, Horizontal Drilling and Enhanced Recovery Tax Incentives: Implementation of SB 18, in Minutes, Revenue Oversight Committee, September 8, 1994, EXHIBIT #4.

18. Ibid.

19. Minutes, Revenue Oversight Committee, September 8, 1994, pp. 6 and 7.

20. Thomas Richmond, op. cit.

21. Steve Bender, Assistant Budget Director, Office of Budget and Program Planning, telephone conversation, November 2, 1994.

22. Memorandum (Fiscal 1993 General Fund and School Equalization Account Fund Balance Information) from Terry Johnson to the Legislative Finance Committee and Revenue Oversight Committee, September 15, 1993, in Minutes, Revenue Oversight Committee, September 17, 1993, EXHIBIT #1.

23. Memorandum (Fiscal 1994 General Fund and School Equalization Account Fund Balance Information) from Terry Johnson to the Legislative Finance Committee and the Revenue Oversight Committee, July 29, 1994, in Minutes, Revenue Oversight Committee, July 29, 1994, EXHIBIT #3.

APPENDIX A

Montana Legislative Council
State Capitol
Helena, 59601
(406) 449-3064

September 6, 1979

SUBJECT: SPECIAL IMPROVEMENT DISTRICTS AND RURAL SPECIAL IMPROVEMENT DISTRICTS

DATE: September 6, 1979

PREPARED FOR: REVENUE OVERSIGHT COMMITTEE

PREPARED BY: Teresa Olcott Cohea TOC

I. DEFINITION OF SID's AND RSID's

II. HISTORY OF MONTANA STATUTES GOVERNING THEM

III. POSSIBLE AREAS OF CONCERN

IV. STATUTES GOVERNING THE CREATION AND FUNDING OF SID's AND RSID's

V. RECENT ATTORNEY GENERAL'S OPINIONS CONCERNING THEM

I. DEFINITION

Special improvement districts (SID) and rural special improvement districts (RSID) are political subdivisions of the state created for the purpose of funding capital improvements in a local area. These districts are created by city or county governing bodies, who retain jurisdiction over the districts. Today, SID's are created to lay sidewalks and pave streets in a new subdivision, provide lighting in a district, or refinish roads in a neighborhood.

The theory of special improvement districts is that the cost of an improvement is borne by those who benefit from it. The local governing body sells bonds or issues warrants to finance the project, which taxpayers in the district repay over a number of years through special assessments on their property. Theoretically, the rest of the city or county taxpayers, who do not benefit directly from the project, do not pay for its costs.

II. HISTORY OF MONTANA STATUTES GOVERNING THEM

Special improvement districts have been important to the expansion of Montana's cities and towns for nearly a century. In 1887, the legislature enacted a "complete municipal code" providing for the creation of special districts upon petition of the freeholders of the district, the financing of capital improvements through the issue of notes, and the assessment of the costs of the improvement to taxpayers in the district.[1]

The fact that this new law was well known and often used can be inferred from the amendments made to it by the 1889, 1893, 1897, and 1901 sessions, as cities experienced slight problems with the law or needed new provisions. In 1889, for example, the legislature deleted the requirement that freeholders must petition for creation of the district.[2]

By 1913, the much amended sections were "such a complex piece of patch-work, and contain[ed] so many inconsistent and incongruous provisions as to make the law upon the subject uncertain in the extreme."[3] The legislature repealed the existing provisions and enacted new provisions, based on California's laws. This 1913 law is the basis for our current statutes on special improvement districts. In 1915, the legislature extended these provisions to counties, giving commissioners the authority to create RSId's in "thickly populated areas" outside municipal boundaries upon petition of 60% of the freeholders in the proposed district.[4]

While, theoretically, special improvement district costs were to be funded by property owners in the district, Montana statutes have since 1887 provided for the possibility of partial payment by the rest of the taxpayers in the city or county. The 1887 law, for example, allowed the city council to pay up to one-half of the cost of certain projects from the city's

general fund. Amendments in 1897 required the city council to assess not more than 75% of the cost of improving a street on the property owners bordering the street and not less than 25% on all the property owners in the city.[5]

These provisions were, presumably, based on the belief that the entire city benefitted to some degree by some types of improvement made in one of its parts. This tradition was, however, considerably enlarged in 1929 when the legislature required all cities in which bonds for any type of SID project were outstanding to create an SID revolving fund funded by loans from the city's general fund and by a mandatory levy on all property in the city. The levy was limited in any one year to 5% of the total amount of bonds outstanding. The reason for this law was the depressed real estate market and the increase in the delinquencies in Montana brought about by low agricultural prices:

> It is a matter of common knowledge that there exists at present...practically no market at all for special improvement bonds and warrants of the communities of the state of Montana... the value of district bonds and warrants [is] problematical, and their salability greatly impaired....The public credit and public good necessitated some action....

At least one taxpayer felt that the 1929 legislature had taken the wrong action. He brought suit against Great Falls on the grounds that the general levy for the SID revolving fund was not for a public purpose and because the 1929 act was a special law, benefitting only bondholders and residents of special improvement districts. The Montana Supreme Court, however, disagreed. It held that...

> "work to be done within such improvement districts... is essentially public work, and the purpose of providing for such work necessarily a public purpose...That the purchasers of bonds or warrants shall, in the future, have greater security for the payment thereof than they have had in the past, is but incidental to the public purpose of the Act before us, and does not mitigate against its validity."[6]

The Court did rule, however, that a revolving fund could not be created to back bonds issued prior to 1929.[7]

The creation of the revolving fund and the mandatory levy did not, however, transform SID bonds into general obligation bonds, the Court later held. Money from the revolving fund is simply loaned to the SID fund and the revolving fund has a lien as security. No bondholder can require the city to make a general levy in excess of the 5% of outstanding bonds

per year to redeem the bonds.[8] [However, over a period of years the "5%" general levy would eventually pay off the bonds. The city could then take possession of property in the district for delinquent assessments and - hopefully - be able to sell it to repay the loan to the revolving fund.] In 1957, the legislature expanded the provision for a revolving fund to RSID's.[9]

After 1929, SID bonds sales improved and continued to be a major method of developing cities and counties. The statutes governing SID's and RSID's have been amended frequently and interpreted in scores of Supreme Court decisions and Attorney General's opinions. New provisions for special improvement parking, lighting, and street sprinkling districts have been added.

A recent A.G. opinion (described below) and several bills introduced during the 1979 session suggest that demand for RSID's and SID's to finance development costs in the new subdivisions may be increasing.[10]

III. POSSIBLE AREAS OF CONCERN

During the 1979 session, several legislators became concerned about the use of SID's and RSID's to finance improvements in new subdivisions. They raised some of the following points.

Pledge of public credit - little public participation

While SID and RSID bonds are not general obligation bonds, statute requires governing bodies to make a general levy against all property in the city or county to fund an SID revolving fund, which makes loans to districts that are unable to make their bond payments. In addition, the governing body may make loans from the government's general fund to district funds. [These statutes are described in greater detail in Section IV.]

Thus, in a limited sense, SID's and RSID's are a public obligation, but the public outside the district has traditionally had little voice in their creation. Only property owners in the district are mailed notice of the proposed creation of the district and only they can protest the district's formation. Moreover, there is no statutory limit on the amount of SID's or RSID's that may be outstanding in a locality at any time, so the "5%" general levy could, conceivably, become quite large in a rapidly developing community.

This problem may be intensified as a result of a recent A.G. opinion, which held that RSID's can be created in an area in which no one resides at the request of a single property owner, the developer. The Attorney General noted that:

> Since the county taxpayers are exposed to potential financial liability should the developer's business judgement prove faulty, the commissioners should exercise great care in assuring that the public interest requires creation of a "developer RSID."

He held, nonetheless, that an RSID could be created on unoccupied parcels of land.[11]

There are also two additional areas of uncertainty surrounding the general levy. Sections 7-12-4222 (SID's) and 7-12-2182 (RSID's) provide that the levy may not exceed "in any one year" 5% of value of the outstanding bonds. Department of Community Affairs local government audit staff interpret this to mean that no general levy need be made if the amount in the revolving fund equals 5% of the outstanding bonds. Some cities and counties, however, interpret the sections to allow a levy of 5% of this value annually and build a much larger revolving fund.[12] In Polson, for example, the amount in the revolving fund in 1977 equaled 10% of the outstanding bonds. In Missoula, the fund in 1978 equaled 11% of the outstanding bonds.[13] Further, the statutes permit but do not require local officials to transfer excess funds in the SID or RSID revolving fund back to the general fund. (Sections 7-12-4227 and 7-12-2186) So, taxpayers outside the district could, conceivably, never be repaid for the loan they made to the SID district.

SID bond salesmen contended that the revolving fund was necessary to sell bonds. In future research reports, I will gather more information on this point.

Lack of information about districts

Many taxpayers are unaware that a liability against his property is created by each new SID or RSID. Moreover, unless he reads the legal notice section of his local newspaper, an owner of property is unlikely to know that one is being formed. Inhabitants in Missoula may be surprised to know, for example, that 1/2 of one mill was levied last year for the SID revolving fund for the 101 outstanding SID bonds.

This lack of information continues at the state level. While counties and cities keep separate accounts for each SID or RSID bond, records of the outstanding balance of each bond, and are legally required to have revolving funds if any bonds have been issued in the local government unit, this information is not readily available outside the county courthouses or city halls. The only record of SID and RSID bonds collected by a state agency is in the Annual Reports and Treasurer's Reports filed with the Department of Community Affairs.[14] The format and completeness of these reports varies substantially and capturing data about bonds is difficult.*

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*Recent changes in forms and standardization of accounting procedures may help in gathering such data in the future.

Several hours research in these sources yielded the incomplete data shown in Table I. County Treasurers' Reports show the revolving fund balances, for example, but not the value of outstanding bonds. Only if an audit of the county was performed is this information stored in DCA files.

This lack of information makes it difficult to determine the total amount of indebtedness in SID's and RSID's throughout the state, whether use of them is declining or increasing, and whether district funds for repayment of bonds are in a healthy state.

TABLE I

City or Town	Fiscal Year	Balance in Revolving Fund	No. of Districts	Total Value of Outstanding Bonds
Dillon	79	$ 47,926	5	$ 278,900
Bozeman	78	200,092		5,585,511
Billings	78	485,675		12,038,126
Butte	77	915	7	171,170
Polson	77	4,485	4	43,884
Missoula	78	365,110	101	3,286,500
Helena	79	257,944	56	8,090,074
Havre	79	58,987	24	901,833
County				
Cascade	79	24,057		
Stillwater	79	2,659		
Yellowstone	77	37,465		1,614,408
	79	48,910		
Missoula	77	76,770		2,505,662
	78	NA		2,491,934
	79	165,897	136	NA
Park	79	-0-		
	78		1	195,000
McCone	79	-0-		
Richland	77	7,500	1	52,700
Lewis & Clark	77	-0-		-0-
Madison	77	-0-		-0-

IV. STATUTORY PROVISIONS GOVERNING THE CREATION AND FUNDING OF SID's AND RSID's

Rural Improvement Districts (RSID's)*

A. Purpose

An RSID may be created "for the purpose of building, constructing, or acquiring by purchase devices intended to protect the safety of the public from open ditches, carrying irrigation or other water and maintaining sanitary and storm sewers, light systems, waterworks plants, sidewalks, and such other special improvements as may be petitioned for."

B. Where it may be created

RSID's may be created only in "thickly populated localities outside the limits of incorporated towns and cities." It may extend into more than one county.

C. Method of creation

A county governing body may create an RSID:

1) if it finds that "the public interest and convenience" require it; and

2) if 60% of the "freeholders affected thereby" petition for its creation; and

   a) if one person owns all the affected property, his signature is sufficient; and

   b) the 60% refers to the number of owners, not the property owned. If 60% own 1/4 of the property and a single owner holds the remainder, his refusal to sign does not necessarily block the creation of the RSID; and

3) by passing a resolution of intention to form the district, detailing the boundaries of the proposed district, the project to be undertaken, and its approximate cost; and

4) by promulgating notice of this resolution

   a) public notice in a daily newspaper of general circulation for 10 consecutive days or in two issues of a weekly newspaper; and

   b) post notice in 3 public places; and

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*Sections 7-12-2101 through 7-12-2301.

c) mail notice to every real property owner in the district; and

5) by hearing of protests against creation of district; and

6) by passing a resolution creating the district.

D. Protests to Creation of District

Taxpayers can protest the creation of an RSID and its extension.

1) Extension of RSID

a) The county commissioners may extend a proposed district to property not fronting on the proposed improvement if the project

i) "in the opinion of the board of county commissioners, is of more than local or ordinary public benefit"; or

ii) would cost more than 1/2 the total assessed value of the land in the district.

b) Owners* in the proposed district may protest this extension within 15 days after publication of notice.

c) The county commissioners must hold a hearing on the protest.

d) The county commissioners may not extend the district for 6 months if the owners of more than 50% of the entire proposed extended district protest.

2) Creation of RSID

a) Owners in a proposed RSID district may protest its creation within 15 days after the notice of resolution of intent is passed.

b) The county commissioners must hold a hearing on the protests and may not approve its creation for 6 months if the owners of more than 50% of the area fronting the proposed district protest.

3) The county commissioners may, however, overrule these protests by a unanimous vote if the proposed project is the installation of sanitary sewers.

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*Anyone owning fee, holding title, or executing acts of ownership, or a leaseholder.

E. Levy, assessment, and collection of special assessments to defray RSID costs

1) The county commissioners establish the special assessment of the taxable property in the district to repay the RSID project costs. Each parcel of land in the district is assessed on the proportion its area bears to the district's total. If the district is more than 5 miles outside city boundaries (and presumably not conveniently marked in blocks), the assessments may be calculated on assessed value.

2) They must publish notice of this levy and allow taxpayers the right to protest it for 5 days after its publication.

3) After a hearing on any protests, the board may modify the assessment.

4) The county commissioners must also levy a tax for the maintenance or repair of an RSID project annually on the property of the district. The commissioners may annually extend the boundaries of a maintenance district.

5) Special assessment taxes for RSID costs are collected in the same manner as general property taxes and placed in an RSID fund. Taxpayers may also protest the assessments in the same manner that property taxes are protested.

6) Special assessments for RSID's and for RSID maintenance are a lien against the property in the district. The lien can be extinguished only by payment of the assessments, penalties, cost, and interest.

F. Financing RSID's

1) County commissioners shall issue warrants or bonds to pay RSID costs.

2) These bonds must be repaid -- by taxes on the property -- within 30 years (or 40 years if federal loans are involved).

3) The county treasurer must create a separate district fund account to receive all special assessments from that district and from which bond payments are made.

4) The county commissioners must also create a revolving fund for the repayment of all RSID bonds or warrants outstanding in the county. The sources of funds for this revolving fund are:

a) loans from the county general fund (permissive);

b) loans from a county revolving fund generated by a levy on all the taxable property in the county, not to exceed (with the transfers) in any one year 5% of the principal outstanding on all RSID bonds and warrants in the county (mandatory).

5) Whenever the county makes a loan from the county revolving fund to a district fund, a lien is created against the land in the district on which the assessments are delinquent in the amount of the loan. The commissioners may foreclose on this lien when the bonds or warrants are repaid and the loan is still outstanding.

6) The county commissioners may agree to provide annual loans to a district revolving fund from the county general fund or from the county revolving fund for the life of the bond or warrant. These agreements may be binding for 30 or 40 years.

7) The commissioners may transfer any excess in the county revolving fund into the county general fund.

Special Improvement Districts (SID's)*

A. Purpose

An SID may be created to:

1) build and maintain devices to protect the public from open ditches;

2) build municipal swimming pools and other recreational facilities;

3) improve streets, alleys, or public ways;

4) construct and reconstruct sidewalks, crosswalks, culverts, bridges, curbs, gutters, parkings, sewer systems, waterworks, irrigation systems, fire protection devices, tunnels, dams, etc.; and

5) accomplish "any work...which shall be deemed necessary to improve the whole or any portion" of a city.

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*Sections 7-12-4101 through 7-12-4504.

B. Where it may be created

An SID may be created on any land within the boundaries of an incorporated city or town.

C. Method of creation

The governing body of a municipality may create an SID by:

1) finding that "the public interest and convenience may require" its creation; and

2) issuing a resolution of intention to create an SID "the public interest or convenience may require" [NO petition of affected citizens if required]; and

3) publish notice of this resolution, showing the district boundaries, proposed project, and approximate cost, in

a) a daily or weekly newspaper (5 times); or

b) posting notice in 3 public places; and

c) a copy mailed to each owner of real property in the district; and

4) holding a hearing on any protests received; and

5) issuing a resolution creating the special improvement district.

C. Extending a District

A municipal governing body may extend an SID if:

1) the proposed project is ", in the opinion of the council,...of more than local or ordinary public benefit"; or

2) the estimated cost of the project would exceed 1/5 of the total taxable value of the lots fronting the project.

E. Protests

1) Property owners in the proposed district (or the proposed extended district) may protest its creation within 15 days of the first notice of resolution to create the district.

2) The council may not create the district (or extend it) for 6 months if:

a) the owners of more than 50% of the property fronting the project protest; or

b) the owners of more than 50% of the property in the extended area protest.

3) The council may overrule these protests if:

a) the project is to pave a cross block to connect already paved streets; or

b) the project is for a sanitary sewer and the owners of less than 75% of the land protest and the council votes unanimously to overrule these protests. [If the owners of more than 75% of the land protest, the council may not overrule the protests.]

F. Creating a Maintenance District

The Council must assess the property in the district a sufficient amount annually to maintain the project. The council may change the boundaries of this district annually.

G. Levy, Assessment, and Collection of Taxes to Defray SID Costs

Same as for RSID's except:

1) The apportioning of special assessments may be calculated on area, frontage, or combined area and frontage.

2) Property owners may pay interest due on the bonds semi-annually rather than annually.

H. Financing SID's

1) The city or town council shall issue warrants or bonds to pay SID costs.

2) The bonds must be repaid - by taxes on the property - within 20 years.

3) The council must create a revolving fund for the repayment of all SID bonds or warrants outstanding.* The sources of funds for this revolving fund are:

a) loans from the city or town general fund (permissive);

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*It may also create a supplemental revolving fund out of parking meter revenue to repay SID bond used for street projects. This creation of this revolving fund must be approved by the qualified electors of the city. Sections 7-12-4241 - 7-12-4258 contain specific provisions relating to this type of fund.

b) loans from the municipality revolving fund generated by a levy on all taxable property in the municipality, not to exceed in any one year 5% of the principal outstanding on all SID bonds and warrants outstanding in the county (mandatory); and

c) money in district funds that is not needed to make bond payments.

4) The council may agree to make loans to the SID for the entire life of the bond or warrant fund from:

a) the municipal SID revolving fund; or

b) the municipal general fund.

5) A loan from the municipal general fund or revolving fund creates a lien on the property in the district for the amount of the loan. This lien may not be enforced until the SID bond or warrants are repaid.

6) The municipality's governing body may transfer money in the revolving fund that it deems in excess of that necessary to pay or redeem bonds to the city's general fund or use these funds to purchase property in the district sold for delinquent assessments.

V. RECENT ATTORNEY GENERAL'S OPINIONS ON SID's AND RSID's

A. Thickly populated localities

In 1976, the Cascade County Attorney requested an opinion to clarify whether a rural special improvement district could be created for an area in which there were no inhabitants but which was adjacent to a densely populated area. Section 16-1601 (now renumbered 7-12-2102) allows the board of county commissioners to create RSID's in "thickly populated localities outside of the limits of incorporated towns and cities...."

Attorney General Woodahl held that

> "the term 'thickly populated locality'...refers to the general area within and surrounding the proposed district, and is not restricted to the confines of the district. Contrary interpretation would make it almost impossible for the county commissioners to create such district as an incident to the development of new subdivisions, and would thwart the intent of the legislature in granting this authority...The board may proceed ...to create the district, even though there may be no inhabitants in the district itself."[15]

B. Raw land development

In 1979, the Missoula County Attorney raised a similar question: can a board of county commissioners create RSID's to fund improvements on underdeveloped and unoccupied parcels of land which are in the process of being subdivided for sales by a single developer? The county attorney was concerned about the creation of districts "which allow subdividers to finance improvements with little expenditure of their own capital and pass the costs along to the ultimate purchasers of the lots in the form of RSID assessments".

The Attorney General noted that RSID statutes were designed to protect two classes of citizens: 1) the taxpayers within the district who pay the assessments and receive the benefits of the improvement; and 2) the citizens of the county whose credit is pledged in support of the bonds. While acknowledging that "developers RSID's" may expose taxpayers to more potential financial liability than RSID's in developed areas, he found that county commissioners clearly had the administrative discretion to determine that "the public interest or convenience" required the creation of an RSID in an unoccupied area. Taxpayers outside the district were protected by the requirement that commissioners consider the public interest.

The Attorney General urged commissioners to exercise "great care in assuring that the public interest requires creation of a 'developer RSID'" but concluded:

> "Section 7-12-2102, MCA, allows the board of county commissioners to create RSID's to fund improvements on underdeveloped and unoccupied parcels of land, provided the proposed district lies within an area that is 'thickly populated'."[16]

NOTES

1. Act approved 10 March 1887 and compiled in statutes of 1887 as Chapter 22, 5th Division, Section 315-440.

2. Laws of 1889, p. 178.

3. Stadler et al. v. City of Helena, 46 Mont. 132 (1912).

4. Chapter 123, Laws of 1915.

5. House Bill 204, Laws of 1897, section 19.

6. Stanley v. Jeffries, 86 Mont. 114 (1929), p. 120.

7. Ibid.

8. Hansen v. City of Havre, 112 Mont. 207 (1941); Truax v. Town of Lima, 121 Mont. 152 (1948).

9. Chapter 188, Laws of 1957.

10. SB 270 and SB 299 of the 1979 Session. A.G. Opinion Vol. 38, Opinion No. 23 (28 June 1979).

11. A.G. Opinion, Vol. 38, No. 23.

12. Information from Don Dooley, Local Assistance Chief, DCA.

13. Calculated from material in DCA files.

14. Information from Don Dooley.

15. Vol. 36, Opinion No. 109 (30 November 1976).

16. Vol. 38, Opinion No. 23 (28 June 1979).

APPENDIX B

SENATE JOINT RESOLUTION NO. 33

STUDY PARTICIPANTS

Senator Sue Bartlett--Senate District 23, Helena
Mae Nan Ellingson--Dorsey & Whitney
Representative David Ewer--House District 53, Helena
Larry Gallagher--City of Kalispell
Miral Gamradt--City of Bozeman
Alec Hansen--Montana League of Cities and Towns
Gene Huntington--Dain Bosworth, Inc.
Representative Royal Johnson--House District 88, Billings
Kreg Jones--D.A. Davidson & Co.
Anthony Kendall--representing Carbon County
Shelley Lane--City of Helena
Tim Magee--City of Great Falls
Anna Miller--Department of Natural Resources and Conservation
Gordon Morris--Montana Association of Counties
Bob Murdo--Jackson, Murdo, Grant & McFarland
Barbara Neuwerth--Department of Health and Environmental Sciences
John Shontz--representing Carbon County
John Tubbs--Department of Natural Resources and Conservation
Nathan Tubergen--City of Billings

APPENDIX C

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS CONCERNING THE FINANCING OF SPECIAL IMPROVEMENT DISTRICTS AND RURAL SPECIAL IMPROVEMENT DISTRICTS; REVISING THE INFORMATION THAT MUST BE INCLUDED IN THE NOTICE OF INTENTION TO CREATE AN IMPROVEMENT DISTRICT; ALLOWING A BOARD OF COUNTY COMMISSIONERS OR A MUNICIPAL GOVERNING BODY TO CREATE A SPECIAL IMPROVEMENT DISTRICT RESERVE ACCOUNT; ALLOWING A BOARD OF COUNTY COMMISSIONERS OR A MUNICIPAL GOVERNING BODY TO IMPOSE AN ADDITIONAL INTEREST RATE ON UNPAID ASSESSMENTS; REQUIRING THAT 5 PERCENT OF THE PRINCIPAL AMOUNT OF BONDS OR WARRANTS BE DEPOSITED IN THE REVOLVING FUND FOR BONDS AND WARRANTS SECURED BY THE REVOLVING FUND; LIMITING THE DURATION OF THE REVOLVING FUND OBLIGATION; ESTABLISHING FACTORS TO BE CONSIDERED BEFORE PLEDGING THE REVOLVING FUND; AMENDING SECTIONS 7-12-2105, 7-12-2153, 7-12-2176, 7-12-2182, 7-12-2183, 7-12-2185, 7-12-4106, 7-12-4169, 7-12-4189, 7-12-4222, 7-12-4223, 7-12-4225, 7-14-4712, AND 7-14-4732, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-12-2105, MCA, is amended to read:

"**7-12-2105. Notice of resolution of intention to create district -- hearing.** (1) Upon having passed the resolution of intention pursuant to 7-12-2103, the board of county commissioners ~~must~~ shall publish notice of the passage of ~~such~~ the resolution of intention as provided in 7-1-2121.

(2) ~~The board shall also cause a copy of such notice to be posted in three public places within the boundaries of such special improvement district.~~ A copy of ~~such~~ the notice ~~shall~~ must be mailed, as provided in 7-1-2122, to ~~every~~ each person, firm, or corporation or the agent of ~~such~~ the person, firm, or corporation owning real property within the proposed district listed in ~~his~~ the owner's name upon the ~~last completed~~ last-completed assessment roll for state, county, and school district taxes.

(3) (a) ~~Such~~ The notice must describe the general character of the improvement or improvements

~~so~~ proposed to be made or acquired by purchase, state the estimated cost ~~thereof~~ of the improvements, describe generally the method ~~or methods~~ by which the costs of the improvements will be assessed, and designate the time when and the place where the board will hear and pass upon all protests that may be made against the making or maintenance of ~~such~~ the improvements or the creation of ~~such~~ the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-2182:

(i) the county general fund may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the county to meet the financial requirements of the revolving fund.

(c) The notice ~~shall~~ must refer to the resolution on file in the office of the county clerk for the description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice ~~shall~~ must state the exact purchase price of ~~such~~ the existing improvement."

Section 2. Section 7-12-2153, MCA, is amended to read:

"**7-12-2153. Incidental expenses considered as cost of improvements -- costs for bonds or warrants secured by revolving fund -- district reserve account.** (1) ~~The cost and expense~~ Incidental expenses connected with ~~and incidental to~~ the formation of ~~any~~ a special improvement district, including the cost of preparation of plans, specifications, maps, or plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-2101(7) ~~shall be~~ are considered a part of the cost ~~and expenses~~ of making the improvements within ~~such~~ the special improvement district.

(2) ~~The~~ If the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, the original costs of any improvement ~~may, at the option of the board of county commissioners,~~ must include an amount ~~not to exceed~~ equal to 5% of the principal amount of any bonds or warrants to be issued, which ~~shall~~ must be deposited in the revolving fund created in 7-12-2181.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the board of county commissioners may create a district reserve account.

(b) As part of the original costs of the improvements, the board of county commissioners may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any rural special improvement district bonds or warrants issued. The amount must be

deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-2183.

(e) Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.

(4) The establishment of a district reserve account does not preclude the board of county commissioners from requiring additional security from the owners of real property in the district."

Section 3. Section 7-12-2176, MCA, is amended to read:

"**7-12-2176. Interest rate on unpaid assessments.** (1) The installments of assessments remaining unpaid bear simple interest at an annual rate ~~of~~ equal to the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the rural special improvement district; plus

(c) at the option of the board of county commissioners, up to an additional 1/2 of 1% a year.

(2) The board of county commissioners may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed."

Section 4. Section 7-12-2182, MCA, is amended to read:

"**7-12-2182. Sources of money for revolving fund.** (1) For the purpose of providing funds for ~~such~~ the revolving fund, the board of county commissioners:

(a) shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-2185, include in the cost of the improvements to be defrayed from the proceeds of the bonds or warrants an amount equal to 5% of the principal amount of the bonds or warrants to be issued as provided in 7-12-2153(2);

~~(a)~~(b) may, ~~in its discretion and~~ from time to time, transfer to the revolving fund from the general fund of the county ~~such~~ an amount ~~or amounts~~ as may be ~~deemed~~ necessary~~, which~~. The amount ~~or~~

~~amounts so~~ transferred ~~shall be considered and shall be loans~~ is a loan from ~~such~~ the general fund to the revolving fund~~; and~~.

~~(b)~~(c) shall, in addition to ~~such~~ a transfer or transfers from the general fund or in lieu ~~thereof~~ of a transfer, levy ~~and collect~~ for ~~such~~ the revolving fund ~~such~~ a tax, ~~hereby~~ declared to be for a public purpose, on all ~~the~~ taxable property in ~~such~~ the county as ~~shall be~~ is necessary to meet the financial requirements of ~~such~~ the revolving fund. ~~However, a~~ A tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding rural special improvement district bonds and warrants secured ~~thereby~~ by the revolving fund. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding rural special improvement district bonds and warrants secured ~~thereby~~ by the revolving fund.

(2) Whenever there ~~shall be~~ is money in the district fund ~~which~~ that is not required for payment of any bond or warrant of ~~such~~ the district secured by the revolving fund or of interest ~~thereon~~ on the bond or warrant, ~~so~~ as much of ~~such~~ the money as may be necessary to pay the loan provided for in 7-12-2183 ~~shall~~ must, by order of the board, be transferred to the revolving fund and the balance of ~~such~~ the money or, if there is no outstanding loan, ~~so~~ as much of ~~such~~ the money as the board considers necessary may be transferred to the improvement district's maintenance fund. After all the bonds and warrants secured by the revolving fund issued on any rural special improvement district have been fully paid, all money remaining in ~~such~~ the district fund ~~shall~~ must, by ~~the~~ order of the board, be transferred to and become part of the revolving fund or the improvement district's maintenance fund."

Section 5. Section 7-12-2183, MCA, is amended to read:

"**7-12-2183. Loan from revolving fund to meet payments on bonds and warrants or to make emergency repairs.** (1) ~~Whenever~~ During the period described in 7-12-2185(2), when any rural special improvement district bond or warrant secured by the revolving fund ~~and~~ or any interest ~~thereon shall~~ on the bond or warrant ~~become~~ becomes due and payable and there ~~shall then be~~ is either no money or ~~not sufficient~~ insufficient money in the appropriate district fund after a transfer from the appropriate district reserve account, if established, with which to pay the ~~same~~ bond, warrant, or interest, an amount sufficient to make up the deficiency ~~may, by order of the board of county commissioners,~~ must be loaned by the revolving fund to ~~such~~ the district fund. ~~Thereupon, such~~ The bond, ~~or~~ warrant, or ~~such~~ interest ~~thereon shall~~ must be paid from the money ~~so~~ loaned ~~or from the money so loaned when added to such insufficient~~

~~amount, as the case may require~~ and money available in the district fund.

(2) ~~Whenever any~~ If there is insufficient money in the rural special improvement district maintenance fund ~~does not have sufficient money~~ to pay the cost of emergency repairs, the board of county commissioners, by order or resolution, may loan money from the revolving fund to ~~such~~ the district maintenance fund. ~~Such~~ The loan ~~shall~~ must be repaid in annual installments in not more than 3 years. ~~In no event may the~~ The loans may not ~~interfere with~~ cause a default in the payments of the principal of the bonds or warrants or the interest on the bonds or warrants. The loan ~~shall~~ must be repaid by an assessment as provided by 7-12-2120 if other funds are not available. If there are ~~not sufficient~~ insufficient funds in the revolving fund to make the loans without ~~interfering with~~ causing a default in the payment of the principal of the bonds or warrants or the interest on the bonds or warrants secured ~~thereby~~ by the revolving fund, then the loans may not be made."

Section 6. Section 7-12-2185, MCA, is amended to read:

"7-12-2185. Covenants to ~~utilize~~ use revolving fund -- duration of revolving fund obligation -- factors to be considered. (1) In connection with the issuance of rural special improvement district bonds or warrants, the board of county commissioners may undertake and agree:

(a) to ~~issue orders annually authorizing~~ make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts ~~thereof~~, to the extent that funds are available; and

(b) to provide funds for ~~such~~ the revolving fund pursuant to the provisions of 7-12-2182 by annually making ~~such~~ a tax levy (or, in lieu ~~thereof~~ of the tax levy, ~~such~~ a loan from the general fund) ~~as the board may so agree to and undertake~~, subject to the maximum limitations imposed by 7-12-2182.

(2) (a) The undertakings and agreements ~~shall be~~ are binding upon ~~said~~ the county ~~so long as any of said~~ with respect to the rural special improvement district bonds or warrants ~~so offered or any interest thereon remain unpaid~~ until the earlier of:

(i) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid; or

(ii) the date that is the later of:

(A) the final stated maturity date of the bonds or warrants; or

(B) the date on which all special assessments levied in the district have been either paid or

discharged.

(b) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to occur upon:

(i) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law; or

(ii) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(3) Prior to entering into the undertakings and agreements set forth in subsection (1), the board of county commissioners shall take into consideration the following factors, including other circumstances that the board may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be financed; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(4) Any findings or determinations with respect to the factors contained in subsection (3) made by the board of county commissioners in a resolution authorizing the undertakings and agreements or the

issuance of bonds or warrants are conclusive evidence that the board has taken into consideration the factors required by subsection (3).

~~(3)~~(5) In lieu of the undertakings and agreements set forth in subsection (1), the board of county commissioners may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund ~~shall~~ does not secure the bonds or warrants and that the bonds or warrants ~~shall be~~ are payable solely from the district fund created ~~therefor~~ for the bonds or warrants and ~~shall~~ do not have ~~no~~ a claim against the revolving fund."

Section 7. Section 7-12-4106, MCA, is amended to read:

"7-12-4106. Notice of passage of resolution of intention. (1) Upon having passed ~~such~~ the resolution of intention pursuant to 7-12-4104, the council ~~must~~ shall give notice of the passage of ~~such~~ the resolution of intention.

(2) The notice must be published ~~for 5 days in a daily newspaper or in some one issue of a weekly paper published in the city or town or, in case no newspaper be published in such city, then by posting for 5 days in three public places in the city or town~~ as provided in 7-1-2121. A copy of ~~such~~ the notice ~~shall~~ must be mailed to ~~every~~ each person, firm, or corporation or the agent of ~~such~~ the person, firm, or corporation having real property within the proposed district listed in ~~his~~ the owner's name upon the ~~last completed~~ last-completed assessment roll for state, county, and school district taxes, at ~~his~~ the owner's last-known address, upon the same day ~~such~~ that the notice is first published or posted.

(3) (a) ~~Such~~ The notice must describe the general character of the ~~improvement or the~~ proposed improvements ~~so proposed to be made~~, state the estimated cost ~~thereof~~ of the improvements, describe generally the method ~~or methods~~ by which the costs of the improvements will be assessed, and designate the time when and the place where the council will hear and pass upon all written protests that may be made against the making or acquisition of ~~such~~ the improvements or the creation of ~~such~~ the district.

(b) If the revolving fund is to be pledged to secure the payment of bonds and warrants, the notice must include a statement that, subject to the limitations in 7-12-4222:

(i) the general fund of the city or town may be used to provide loans to the revolving fund; or

(ii) a general tax levy may be imposed on all taxable property in the city or town to meet the financial requirements of the revolving fund.

(c) The notice ~~shall~~ must refer to the resolution on file in the office of the city clerk for the

description of the boundaries. If the proposal is for the purchase of an existing improvement, the notice must state the exact purchase price of the existing improvement."

Section 8. Section 7-12-4169, MCA, is amended to read:

"7-12-4169. **Incidental expenses considered as cost of improvements -- costs for bonds or warrants secured by revolving fund -- district reserve account.** (1) ~~The costs and expenses~~ Incidental expenses connected with ~~and incidental to~~ the formation of ~~any~~ a special improvement district, including costs of preparation of plans, specifications, maps, and plats; engineering, superintendence, and inspection; preparation of assessment rolls; and the other incidental expenses described in 7-12-4101(7) ~~shall be~~ are considered a part of the cost ~~and expenses~~ of making the improvements within ~~such~~ the special improvement district.

(2) ~~The~~ If the bonds or warrants are secured by the revolving fund under 7-12-4225, the costs of any improvement ~~may, at the option of the municipal governing body,~~ must include an amount ~~not to exceed~~ equal to 5% of the principal amount of any bonds or warrants to be issued, which ~~shall~~ must be deposited in the revolving fund created in 7-12-4221.

(3) (a) Subject to the provisions of subsections (3)(b) through (3)(e), the city or town council may create a district reserve account.

(b) As part of the original costs of the improvements, the city or town council may include an amount, in addition to the amount, if any, specified in subsection (2), not to exceed 5% of the principal amount of any special improvement district bonds or warrants issued. The amount must be deposited in a district reserve account created and maintained in the district fund.

(c) If there are insufficient funds in the district bond and interest accounts to pay when due the principal of and the interest on bonds or warrants, the district reserve account, if established, must be used to pay the principal of and the interest on the bonds or warrants issued against the district fund.

(d) If bonds or warrants are secured by the revolving fund, the district reserve account, if established, must be exhausted before a loan may be made from the revolving fund pursuant to 7-12-4223.

(e) Money remaining in the district reserve account after the principal and interest on all bonds and warrants drawn on the district have been paid or discharged must be transferred to the revolving fund.

(4) The establishment of a district reserve account does not preclude the city or town council from requiring additional security from owners of real property in the district."

Section 9. Section 7-12-4189, MCA, is amended to read:

"**7-12-4189. Simple interest on assessments.** (1) Upon all special assessments and taxes levied and assessed in accordance with any of the provisions of this part, simple interest ~~shall~~ must be charged at an annual rate ~~not exceeding~~ equal to the sum of:

(a) 1/2 of 1% a year; plus

(b) the average interest rate payable on the outstanding bonds or warrants of the special improvement district; plus

(c) at the option of the city or town council, up to an additional 1/2 of 1% a year.

(2) The city or town council may subsequently reduce or eliminate the additional interest rate allowed under subsection (1)(c). If the additional interest rate is reduced or eliminated, it may not be subsequently increased or reimposed.

~~(2)~~(3) The treasurer, in collecting ~~such~~ the special assessment taxes if the ~~same~~ taxes are payable in one installment, shall collect ~~such~~ the interest as may be shown to be due ~~thereon~~ on the taxes by the resolution levying ~~such~~ the assessment. If ~~such~~ the assessment ~~be~~ is payable in installments, the treasurer shall, at the time of collecting the first installment, collect ~~such~~ the interest as may be shown to be due on ~~such~~ the assessment by the resolution levying ~~such~~ the assessment, and ~~thereafter he~~ the treasurer shall collect with each subsequent installment interest on the ~~whole~~ amount remaining unpaid."

Section 10. Section 7-12-4222, MCA, is amended to read:

"**7-12-4222. Sources of money for revolving fund.** (1) For the purpose of providing funds for ~~such~~ the revolving fund, the city or town council:

(a) ~~(i)~~ may, ~~in its discretion and~~ from time to time, transfer to the revolving fund from the general fund of the city or town ~~such~~ an amount ~~or amounts~~ as may be ~~deemed~~ necessary~~, which~~. The amount ~~or amounts so~~ transferred ~~shall be deemed and considered and shall be loans~~ is a loan from ~~such~~ the general fund to the revolving fund~~; and~~.

~~(ii)~~(b) ~~may~~ shall, if the bonds or warrants are secured by the revolving fund pursuant to 7-12-4225, include in the cost of the improvement to be defrayed from the proceeds of the bonds or warrants an amount ~~up~~ equal to 5% of the principal amount of the bonds or warrants ~~and deposit it in the revolving fund upon receipt of such proceeds~~ as provided in 7-12-4169; and

~~(b)~~(c) shall, in addition to ~~such~~ a transfer or transfers from the general fund or in lieu ~~thereof~~ of a

transfer, levy ~~and collect~~ for ~~such~~ the revolving fund ~~such~~ a tax, ~~hereby~~ declared to be for a public purpose, on all ~~the~~ taxable property in ~~such~~ the city or town as ~~shall be~~ is necessary to meet the financial requirements of ~~such~~ the revolving fund. ~~However, a~~ A tax may not be levied if the balance in the revolving fund exceeds 5% of the principal amount of the then-outstanding special improvement district bonds and warrants secured ~~thereby~~ by the revolving fund. If a tax is levied, the tax may not be an amount that would increase the balance in the revolving fund above 5% of the then-outstanding special improvement district bonds and warrants secured ~~thereby~~ by the revolving fund.

(2) Whenever there ~~shall be~~ is money in the district fund ~~which~~ that is not required for payment of any bond or warrant of ~~such~~ the district secured by the revolving fund or of interest ~~thereon~~ on the bond or warrant, ~~so~~ as much of ~~such~~ the money as may be necessary to pay the loan provided for in 7-12-4223 ~~shall~~ must, by order of the council, be transferred to the revolving fund. After all the bonds and warrants issued on any special improvement district or sidewalk, curb, and alley approach warrants secured by the revolving fund have been fully paid, all money remaining in ~~such~~ the district fund ~~shall~~ must, by order of the council, be transferred to and become part of the revolving fund."

Section 11. Section 7-12-4223, MCA, is amended to read:

"7-12-4223. Loans from revolving fund to meet payments on bonds and warrants. ~~Whenever~~ During the period described in 7-12-4225(2), when any special improvement district bond or sidewalk, curb, and alley approach warrants ~~which~~ that are secured by the revolving fund or any interest ~~thereon shall be~~ on the bond or warrants becomes due and payable and there ~~shall then be~~ is either no money or ~~not sufficient~~ insufficient money in the appropriate district fund after a transfer from the appropriate district reserve account, if established, with which to pay the ~~same~~ bond, warrant, or interest, an amount sufficient to make up the deficiency ~~may, by order of the council,~~ must be loaned by the revolving fund to ~~such~~ the district fund. ~~Thereupon, such~~ The bond, ~~or~~ warrant, or ~~such~~ interest ~~thereon shall~~ must be paid from the money ~~so~~ loaned or from the money ~~so~~ loaned ~~when added to such insufficient amount, as the case may require~~ and money available in the district fund."

Section 12. Section 7-12-4225, MCA, is amended to read:

"7-12-4225. Covenants to ~~utilize~~ use revolving fund -- duration of revolving fund obligation -- factors to be considered. (1) In connection with ~~any public offering of~~ the issuance of special improvement

district bonds or sidewalk, curb, and alley approach warrants, the city or town council may undertake and agree:

(a) to ~~issue orders annually authorizing~~ make loans or advances from the revolving fund to the district fund involved in amounts sufficient to make good any deficiency in the bond and interest accounts ~~thereof~~, to the extent that funds are available; and

(b) to provide funds for ~~such~~ the revolving fund pursuant to the provisions of 7-12-4222(1) by annually making ~~such~~ a tax levy (or, in lieu ~~thereof~~ of the tax levy, ~~such~~ a loan from the general fund) ~~as the city or town council may so agree to and undertake~~, subject to the maximum limitations imposed by 7-12-4222(1).

(2) The undertakings and agreements referred to in subsection (1) ~~shall be~~ are binding upon ~~said~~ the city or town ~~so long as any of said~~ with respect to the special improvement district bonds or sidewalk, curb, and alley approach warrants ~~so offered or any interest thereon remain unpaid~~ until the earlier of:

(a) the date on which all bonds or warrants of the issue and interest on the bonds or warrants have been fully paid or discharged in a bankruptcy case in which the special improvement district is the debtor; or

(b) the date that is the later of:

(i) the final stated maturity date of the bonds or warrants; or

(ii) the date on which all special assessments levied in the district have been either paid or discharged.

(3) The discharge of delinquent special assessments levied with respect to a particular lot or parcel is considered to have occurred upon:

(a) the issuance of a tax deed, as provided in 15-18-214, or, if the county is the recipient of the tax deed, upon the sale, lease, or other disposition of the property by the county as provided in Title 7, chapter 8, part 22, 23, 24, or 25, or other applicable law;

(b) the discharge of the trust pursuant to 15-17-318 or upon the sale or lease of the property under 15-17-319 if the property in the district has been assigned to the city or town under Title 15, chapter 17, part 3; or

(c) payment in full of the allowed secured claim for the special assessments in a bankruptcy case in which the owner of the lot or parcel is the debtor.

(4) Prior to entering into the undertakings and agreements set forth in subsection (1), the city or

town council shall take into consideration the following factors, including other circumstances that the city or town council may determine to be material to the public interest of securing the bonds or warrants by the revolving fund:

(a) the estimated market value of the lots, parcels, or tracts included in the district at the time that the district is created in comparison to the estimated market value of the lots, parcels, or tracts after the improvements are made;

(b) the diversity of ownership of property in the district;

(c) the amount of the special assessments proposed to be levied against each lot, parcel, or tract in the district in comparison to the estimated market value of the lot, parcel, or tract after the improvements are made;

(d) the amount of any outstanding special assessments against the property in the district;

(e) the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against property in the district;

(f) the public benefit of the improvements proposed to be financed; and

(g) in the case of a district created to make improvements in a newly platted subdivision:

(i) the prior subdivision development experience and credit rating or credit history of the person developing the land; and

(ii) any contribution by property owners to the costs of the improvements or any security given by property owners to secure payment of special assessments levied in the district.

(5) Any findings or determinations with respect to the factors contained in subsection (4) made by the city or town council in a resolution authorizing the undertakings and agreements or the issuance of bonds or warrants are conclusive evidence that the city or town council has taken into consideration the factors required by subsection (4).

~~(3)~~(6) In lieu of the undertakings and agreements set forth in subsection (1), the city or town council may determine in the resolution authorizing the issuance of the bonds or warrants that the revolving fund ~~shall~~ does not secure the bonds or warrants and that the bonds or warrants ~~shall be~~ are payable solely from the district fund created ~~therefor~~ for the bonds or warrants and ~~shall~~ do not have ~~no~~ a claim against the revolving fund."

Section 13. Section 7-14-4712, MCA, is amended to read:

"**7-14-4712. Procedure upon receipt of petition from all property owners within proposed district.** If a petition for the formation of an improvement district under the provisions of 7-14-4711 is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying ~~such~~ the ownership and making a finding of the fact, shall adopt a resolution of intention to order the improvement, as provided in 7-12-4104~~,~~ and 7-12-4117, and ~~shall have immediate jurisdiction to~~ may adopt the resolution ordering the improvement pursuant to ~~the following provisions~~ 7-14-4711 through 7-14-4723 without ~~the necessity of~~ the publication ~~and posting~~ of the resolution of intention provided for in 7-12-4106."

Section 14. Section 7-14-4732, MCA, is amended to read:

"**7-14-4732. Procedure upon receipt of petition for creation of offstreet parking district.** (1) If a petition for the formation of an improvement district for the leasing, improvement, or operation and maintenance of an offstreet parking site is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lienholders, the governing body, after verifying ~~such~~ the ownership and making a finding of ~~such~~ fact, shall adopt a resolution of intention to order the improvement, pursuant to the provisions of 7-12-4104 and 7-12-4117, and ~~shall have immediate jurisdiction to~~ may adopt the resolution ordering the improvement pursuant to ~~provisions of~~ 7-12-4114 without ~~the necessity of~~ the publication ~~and posting~~ of the resolution of intention provided for in 7-12-4106.

(2) If a petition for the formation of an improvement district for offstreet parking purposes and for the leasing of sites and improvement, operation, and maintenance ~~thereof~~ of sites is ~~presented to the governing body~~ signed by the owners of a majority of the frontage of the property proposed to be contained within the limits of the assessment district and is presented to the governing body, the governing body shall adopt a resolution of intention ordering the proposed improvement and ~~cause same to be published and posted~~ publish the resolution pursuant to the provisions of 7-12-4104 and 7-12-4106."

NEW SECTION. **Section 15. Applicability.** [This act] applies to all special improvement districts and rural special improvement districts created after [the effective date of this act] and, at the option of the city, town, or county, to bonds and warrants issued after [the effective date of this act], if the district was created before [the effective date of this act].

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

-END-

_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE REVENUE OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CERTAIN COUNTY IMPROVEMENT DISTRICTS MAY DECLARE BANKRUPTCY UNDER FEDERAL MUNICIPAL BANKRUPTCY LAW; PROVIDING THAT COUNTIES MAY NOT DECLARE BANKRUPTCY; AND AMENDING SECTIONS 7-7-4111, 7-7-4112, AND 7-7-4113, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Bankruptcy -- definitions.** As used in 7-7-4111 through 7-7-4113 and [this section], the following definitions apply:

(1) "Legislative body" means:

(a) the governing body of a city or town;

(b) the governing body of a local entity that is a district if, by law, the district must have a governing body; or

(c) the governing body of the city, town, or county that created a local entity that is a district if law does not require the district to have a separate governing body. Unless otherwise agreed to by the governing bodies of the county and of the city or town, a joint board composed of an equal number of members from each governing body shall act as the district governing body of a district that was jointly created by the county and the city or town.

(2) "Local entity" means a district created under Title 7, chapter 12, a city, or a town, but the term does not include a county.

Section 2. Section 7-7-4111, MCA, is amended to read:

"7-7-4111. Procedure to declare ~~municipal~~ bankruptcy. (1) ~~Any city or town~~ A local entity may submit itself and a proposed plan of ~~composition~~ adjustment to the jurisdiction of the bankruptcy court having jurisdiction of ~~such~~ the matter. ~~and be~~ If the local entity submits a proposed plan of adjustment, it is governed, subject to the provisions of Montana law applicable to the local entity, by the proceedings,

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orders, and decrees of the court as provided by the federal municipal bankruptcy laws.

(2) The ~~city or town may~~ local entity shall compose and enter into, submit itself to, and perform the plan of ~~composition~~ adjustment as required by the federal laws and the orders and decrees of the bankruptcy court:

(a) upon the adoption by its ~~city council or town council~~ legislative body of an ordinance or resolution:

(i) declaring that it is insolvent or unable to meet its debts as they mature;

(ii) declaring that it desires to effect a plan for the ~~composition~~ adjustment of its debts under the provisions of the federal municipal bankruptcy laws; and

(iii) providing that the ~~city or town~~ local entity shall proceed to the ~~composition~~ adjustment of its ~~municipal~~ indebtedness under the provisions of the federal laws; and

(b) upon the acceptance in writing of the proposed plan of ~~composition~~ adjustment of ~~municipal~~ its indebtedness by creditors of the petitioning ~~municipal corporation~~ local entity ~~owning not less than the percentage thereof in amount of the municipal securities affected or to be affected by the proposed plan of composition,~~ as provided in the federal laws."

Section 3. Section 7-7-4112, MCA, is amended to read:

"7-7-4112. Power to comply with court decrees related to bankruptcy. ~~Any city or town~~ A local entity ~~may~~ shall comply with all orders and decrees contemplated by the federal municipal bankruptcy laws and may issue its bonds and other securities for the carrying out and consummation of the ~~composition~~ adjustment of its debts as provided and contemplated by the federal law and as required by the orders and decrees of the bankruptcy court. The orders and decrees of the bankruptcy court must be based on the Montana law applicable to the local entity."

Section 4. Section 7-7-4113, MCA, is amended to read:

"7-7-4113. Role of state and state agencies in relation to bankruptcy. The state or any department or agency ~~thereof~~ of the state holding any of the securities of ~~any such city or town shall have~~ a local entity has the power to consent to any plan of ~~composition~~ adjustment of the indebtedness of ~~any such city or town~~ the local entity by the board ~~having~~ or official that has custody of and control over ~~any such~~ the securities ~~or by any other official or officials having such custody and control~~."

-END-

100 copies of this public document were published at an estimated cost of $5.00 per copy, for a total cost of $500.00, which includes $500.00 for printing and $.00 for distribution.